TRANSCRIPT OF RECORD

Supreme Court of the United States

October Term, 1950

No. 86

THE UNITED STATES OF AMERICA, PETITIONER

vs.

JAY G. WILLIAMS, CHARLES R. FORD, JOHN S. BOMBACI, AND JOSEPH V. PERRY

On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

---

Petition for Certiorari filed March 9, 1950

Certiorari Granted October 16, 1950

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1949

No. 659

THE UNITED STATES OF AMERICA, PETITIONER,

VS.

JAY G. WILLIAMS, CHARLES R. FORD, JOHN S. BOMBACI AND JOSEPH V. PERRY

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT.

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On February 25, 1949, Indictment was filed in words and figures as follows:

IN THE UNITED STATES DISTRICT COURT
IN AND FOR THE SOUTHERN DISTRICT OF
FLORIDA MIAMI DIVISION

No. 7334-M-Cr.

UNITED STATES OF AMERICA

-vs-

JAY G. WILLIAMS:
JOSEPH V. PERRY:
JOHN S. BOMBACI:
CHARLES R. FORD:
ANDREW J. YUHAS and
DANIA SUPPLY CO., a Florida corporation doing business as Linsdley Lumber Co.

INDICTMENT

Filed Feb. 25, 1949
(T. 18 USC) (51 (1946 Ed.))

The Grand Jury charges:

COUNT ONE

On or about the 28th day of March, 1947, in the Southern District of Florida and within the jurisdiction of this Court, JAY G. WILLIAMS and JOSEPH V. PERRY, both being then and there special police officers under written authority from the Director of Public Safety of the City of Miami, Florida, acting under the laws of the State of Florida, and the ordinances and regulations of the municipality of Miami creating the office and position of special police officer and prescribing the duties of said office and position, and CHARLES R. FORD, who was then and there a police officer employed by the municipality of Miami, State of Florida, acting under the laws of the State of Florida, and the ordinances and regulations of the municipality of Miami, Florida, creating the office and position of police officer and prescribing the duties of said office and position, JOHN S. BOMBACI, ANDREW J. YUHAS and DANIA SUPPLY CO., a Florida corporation, doing business as Lindsley Lumber Co., all of the above named persons being the defendants, herein, conspired to injure, oppress, threaten, and intimidate FRANK J. PURNELL, JR., a citizen of the United States and of the State of Florida, in the free exercise

and enjoyment of the rights and privileges secured to him and protected by the Fourteenth Amendment to the
2 Constitution of the United States, to-wit, the right and privilege not to be deprived of liberty without due process of law, the right and privilege to be secured in his person while in the custody of the State of Florida, the right and privilege not to be subjected to punishment without due process of law, the right and privilege to be immune, while in the custody of persons acting under color of the laws of the State of Florida, from illegal assault and battery by any person exercising the authority of said state, and the right and privilege to be tried by due process of law and if found guilty to be sentenced and punished in accordance with the laws of the State of Florida, that is to say, it was the plan and purpose of said conspiracy that on or about the 28th day of March, 1947, the said defendants would arrest and detain and cause to be arrested and detained the said FRANK J. PURNELL, JR., AND would cause the said FRANK J. PURNELL, JR., to go to and into a certain building sometimes called a shack on the premises of the said Dania Supply Co., at or near 3810 Northwest 17th Avenue, in said City of Miami, and that they would detain the said FRANK J. PURNELL, Jr., in said shack and, while the said FRANK J. PURNELL, JR., was so detained, the said defendants, or some of them, would then and there illegally strike, bruise, batter, beat, assault, and torture the said FRANK J. PURNELL, JR., in order illegally to coerce and force the said FRANK J. PURNELL, JR., to make an admission and confession of his guilt in connection with the alleged theft of personal property alleged to be the property of the said Dania Supply Co., doing business as Lindsley Lumber Co., and in order illegally to coerce and force the said FRANK J. PURNELL, JR., to name and accuse other persons as participants in alleged thefts of personal property alleged to be the property of the said Dania Supply Co., doing business as Lindsley Lumber Co., and for the purpose of imposing illegal summary punishment upon the said FRANK J. PURNELL, JR; that the said conspiracy was formulated and entered into by the defendant CHARLES R. FORD, while in the employ of the municipality of Miami, Florida, and while acting in his official capacity as aforesaid, and by the defendants, JAY G. WILLIAMS and JOSEPH V. PERRY, while acting in their official capacities as aforesaid.

3 In violation of Section 51, Title 18, United States Code (1946 Ed.).

COUNT TWO

On or about the 28th day of March, 1947, in the Southern District of Florida and within the jurisdiction of this Court, JAY G. WILLIAMS and JOSEPH V. PERRY, both being then and there special police officers under written authority from the Director of Public Safety of the City of Miami, Florida, acting under the laws of the State of Florida and the ordinances and regulations of the municipality of Miami creating the office and position of special police officer and prescribing the duties of said office and position, and CHARLES R. FORD, who was then and there a police officer employed by the municipality of Miami, State of Florida, acting under the laws of the State of Florida, and the ordinances and regulations of the municipality of Miami, Florida, creating the office and position of police officer and prescribing the duties of said office and position, JOHN S. BOMBACI, ANDREW J. YUHAS and DANIA SUPPLY CO., a Florida corporation, doing business as Lindsley Lumber Co., all of the above named persons being the defendants herein, conspired to injure, oppress, threaten, and intimidate CHESTER M. ROBINSON, a citizen of the United States and of the State of Florida, in the free exercise and enjoyment of the rights and privileges secured to him and protected by the Fourteenth Amendment to the Constitution of the United States, to-wit, the right and privilege not be be deprived of liberty without due process of law, the right and privilege to be secure in his person while in the custody of the State of Florida, the right and privilege not to be subjected to punishment without due process of law, the right and privilege to be immune, while in the custody of persons acting under color of the laws of the State of Florida, from illegal assault and battery by any person exercising the authority of said State, and the right and privilege to be tried by due process of law and if found guilty to be sentenced and punished in accordance with the laws of the State of Florida; that is to say, it was the plan and purpose of said conspiracy that on or about the 28th day of March,

4 1947, the said defendants would arrest and detain and cause to be arrested and detained the said CHESTER M. ROBINSON and would cause the said CHESTER M. ROBINSON to go to and into a certain building sometimes called a shack on the premises of the said Dania Supply Co., at or near 3810 Northwest 17th Avenue, in said City of Miami, and that they would detain the said CHESTER M. ROBINSON in said shack and, while the said CHESTER M. ROBINSON was so detained, the said defendants, or some of them, would then and there illegally strike, bruise, batter, beat, assault, and

torture the said CHESTER M. ROBINSON, in order illegally to coerce and force the said CHESTER M. ROBINSON to make an admission and confession of his guilt in connection with the alleged theft of personal property alleged to be the property of the said Dania Supply Co., doing business as Lindsley Lumber Co., and in order illegally to coerce and force the said CHESTER M. ROBINSON to name and accuse other persons as participants in alleged thefts of personal property alleged to be the property of the said Dania Supply Co., doing business as Lindsley Lumber Co., and for the purpose of imposing illegal summary punishment upon the said CHESTER M. ROBINSON: that the said conspiracy was formulated and entered into by the defendant, CHARLES R. FORD, while in the employ of the municipality of Miami, Florida, and while acting in his official capacity as aforesaid, and by the defendants, JAY G. WILLIAMS and JOSEPH V. PERRY, while acting in their official capacities as aforesaid.

In violation of Section 5, Title 8, United States Code (1946 Ed.).

COUNT THREE

On or about the 28th day of March, 1947, in the Southern District of Florida and within the jurisdiction of this Court, JAY G. WILLIAMS and JOSEPH V. PERRY, both being then and there special police officers under written authority from the Director of Public Safety of the City of Miami, Florida, acting under the laws of the State of Florida, and the ordinances and regulations of the municipality of Miami creating the office and position of special police officer and prescribing the duties of said office and position, and

5 CHARLES R. FORD, who was then and there a police officer employed by the municipality of Miami, State of Florida, acting under the laws of the State of Florida, and the ordinances and regulations of the municipality of Miami, Florida, creating the office and position of police officer and prescribing the duties of said office and position, JOHN S. BOMBACI, ANDREW J. YUHAS and DANIA SUPPLY CO., a Florida corporation doing business as Lindsley Lumber Co., all of the above named persons being the defendants herein, conspired to injure, oppress, threaten, and intimidate HENRY W. PRIEST, a citizen of the United States and of the State of Florida, in the free exercise and enjoyment of the rights and privileges secured to him and protected by the Fourteenth Amendment to the Constitution of the United States, to-wit, the right and privilege not to be deprived of liberty without due process of law, the right and privilege to be secure in his person while in the custody of the State of Florida, the right

and privilege not to be subjected to punishment without due process of law, the right and privilege to be immune, while in the custody of persons acting under color of the laws of the State of Florida, from illegal assault and battery by any person exercising the authority of said State, and the right and privilege to be tried by due process of law and if found guilty to be sentenced and punished in accordance with the laws of the State of Florida; that is to say, it was the plan and purpose of said conspiracy that on or about the 27th day of March, 1947, the said defendants would arrest and detain and cause to be arrested and detained the said Henry W. Priest, and would cause the said Henry W. Priest to go to and into a certain building sometimes called a shack on the premises of the said Dania Supply Co., at or near 3810 Northwest 17th Avenue, in said City of Miami, and that they would detain the said Henry W. Priest in said shack and, while the said Henry W. Priest was so detained, the said defendants, or some of them, would then and there illegally strike, bruise, batter, beat, assault, and torture the said HENRY W. PRIEST in order illegally to coerce and force the said Henry W. Priest to make an admission and confession of his guilt in connection with the alleged theft of personal property alleged to be the property of the said Dania Supply Co., doing business as Lindsley Lumber Co.. and in order illegally to coerce
6 and for the said HENRY W. PRIEST to name and accuse other persons as participants in alleged thefts of personal property alleged to be the property of the said Dania Supply Co., doing business as Lindsley Lumber Co., and for the purpose of imposing illegal summary punishment upon the said Henry W. Priest; that the said conspiracy was formulated and entered into by the defendant CHARLES R. FORD, while in the employ of the municipality of Miami, Florida, and while acting in his official capacity as aforesaid, and by the defendants, JAY G. WILLIAMS and JOSEPH V. PERRY, while acting in their official capacities as aforesaid.

In violation of Section 51, Title 18, United States Code (1946 Ed.).

COUNT FOUR

On or about the 28th day of March, 1947, in the Southern District of Florida and within the jurisdiction of this Court, JAY G. WILLIAMS and JOSEPH V. PERRY, both being then and there special police officers under written authority from the Director of Public Safety of the City of Miami, Florida, acting under the laws of the State of Florida and the ordinances and regulations of the municipality of Miami creating the office and position of special police officer and pre-

scribing the duties of said office and position, and CHARLES R. FORD, who was then and there a police officer employed by the municipality of Miami, State of Florida, acting under the laws of the State of Florida, and the ordinances and regulations of the municipality of Miami, Florida, creating the office and position of police officer and prescribing the duties of said office and position, JOHN S. BOMBACI, ANDREW J. YUHAS and DANIA SUPPLY CO., a Florida corporation doing business as Lindsley Lumber Co., all of the above named persons being the defendants herein, conspired to injure, oppress, threaten, and intimidate JOHN P. STURNIOLO, a citizen of the United States and of the State of Florida, in the free exercise and enjoyment of the rights and privileges secured to him and protected by the Fourteenth Amendment to the Constitution of the United States, to-wit, the right and privilege not to be deprived of liberty without due process of law, the right and privilege to be secure in
7 his person while in the custody of the State of Florida, the right and privilege not to be subjected to punishment without due process of law, the right and privilege to be immune, while in the custody of persons acting under color of the laws of the State of Florida, from illegal assualt and battery by any persons exercising the authority of said State, and the right and privilege to be tried by due process of law and if found guilty to be sentenced and punished in accordance with the laws of the State of Florida; that is to say, it was the plan and purpose of said conspiracy that on or about the 26th day of March, 1947, the said defendants would arrest and detain and cause to be arrested and detained the said JOHN P. STURNIOLO and would cause the said JOHN P. STURNIOLO to go to and into a certain building sometimes called a shack on the premises of the Dania Supply Co., at or near 3810 Northwest 17th Avenue, in said City of Miami, and that they would detain the said JOHN P. STURNIOLO in said shack and, while the said JOHN P. STURNIOLO was so detained, the said defendants, or some of them, would then and there illegally strike, bruise, batter, beat, assault, and torture the said JOHN P. STURNIOLO in order illegally to coerce and force the said JOHN P. STURNIOLO to make an admission and confession of his guilt in connection with the alleged theft or personal property alleged to be the property of the said Dania Supply Co., doing business as Lindsley Lumber Co., and in order illegally to coerce and force the said JOHN P. STURNIOLO to name and accuse other persons as participants in alleged thefts of personal property alleged to be the property of the said Dania Supply Co. doing business as Lindsley Lumber Co., and for the purpose of imposing illegal summary

punishment upon the said JOHN P. STURNIOLO: that the said conspiracy was formulated and entered into by the defendant, CHARLES R. FORD, while in the employ of the municipality of Miami, Florida, and while acting in his official capacity as aforesaid, and by the defendants, JAY G. WILLIAMS and JOSEPH V. PERRY, while acting in their official capacities as aforesaid.

In violation of Section 51, Title 18, United States Code (1946 Ed.).

A TRUE BILL
/s/ ERNEST J. C. DOLL
Foreman

/s/ FRED BOTTS
Asst. United States Attorney

8 No. .....

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
Miami Division

THE UNITED STATES OF AMERICA
vs.
JAY G. WILLIAMS: JOSEPH V. PERRY: JOHN S. BOMBACI: CHARLES R. FORD: ANDREW J. YUHAS and DANIA SUPPLY CO., a Fla. corp. doing business as Lindsley Lumber Co.

INDICTMENT
T 18 U.S.C.) (51 (1946 Ed.)
civil rights

A true bill,
/s/ ERNEST J. C. DOLL
Foreman

Filed in open court this 25th day of February, A. D. 1949.
EDWIN R. WILLIAMS
Clerk

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by /s/ EARIE F. SPRIGG
Deputy Clerk

Bail, $

9 IN UNITED STATES DISTRICT COURT

Arraignment—March 25, 1949

On March 25th, 1949, Charles R. Ford, John S. Bombaci, Andrew J. Yuhas, Joseph V. Perry, and Dania Supply Company, were arraigned in open Court and each entered a plea of Not Guilty.

On March 25, 1949 the Court allowed defendants until March 31, 1949 in which to file any motions and the Court fixed the date of April 2, 1949 at 9:30 A.M. for the hearing on said motions.

IN UNITED STATES DISTRICT COURT

Motion of Joseph V. Perry to Dismiss or for Bill of Particulars Filed March 31, 1949

COMES NOW, JOSEPH V. PERRY, one of the defendants named in the indictment filed and returned in the above styled cause, before entering a plea thereto moves the Court:

FIRST: To dismiss said indictment upon the following grounds:

(1) As to the indictment and each and every count thereof:

(a) Each and every of said counts fails to charge any offense against the laws of the United States.

(b) Each and every of said counts fails to set forth any facts sufficient to apprise this defendant of the charge intended to be made against him and to protect him against a subsequent prosecution for the same offense.

(c) Each of said counts fails to set forth any facts sufficient to inform this defendant on the charge he is called upon to meet.

(d) Each of said counts are repugnant and contradictory in themselves.

(e) Each of said counts fails to set forth any facts, charging this defendant or any co-defendants with the commission of any act from which the Court may conclude as a matter of law that this defendant or any co-defendants
10 entertained any purpose or intent to injure, procrast, threaten, and intimidate any of the persons named in either or any of said counts in the free exercise and enjoyment of any rights and privileges secured to them or any of them by the Constitution of the United States or any laws of the United States.

(f) Each and every of said counts sets forth mere conclusions, insofar as said counts attempt to charge this defendant or any co-defendants with any conspiracy or specific intent.

WHEREFORE: said defendant moves the Court to dismiss said Indictment and each and every count thereof but in the alternative, said defendant moves the Court, in the event the Court should be of the opinion that said Indictment is sufficient to charge an offense against the Laws of the United States, to require the Government to furnish a Bill of Particulars:

FIRST: As to the indictment and each and every count thereof, setting forth and showing:

(a) The precise date or dates upon which the Government proposes to prove that the offense charged in each or any of said counts was committed.

(b) To set forth the particular facts on the part of defendant, JOSEPH V. PERRY, upon which the Government proposes to rely to prove the connection of said defendant with any conspiracy charged in either or any of said counts.

(c) To set forth the particular facts upon which the Government intends to rely in either or any of said counts to show the connection or participation of said JOSEPH V. PERRY, in any conspiracy as charged in either or any of said counts.

(d) To set forth the names of the persons with whom the defendant, JOSEPH V. PERRY, is alleged to have conspired and to set forth whether the alleged conspiracy was based upon an expressed agreement or otherwise and if so, to set forth the terms of the alleged agreement out of which the alleged conspiracy was formed.

11 (e) To set forth any acts which the Government intends to prove the defendant, JOSEPH V. PERRY, committed pursuant to any conspiracy charged in either or any of said counts.

(f) To set forth any facts upon which the Government intends to rely, in order to prove the commission of any act by the defendant, JOSEPH V. PERRY, or any co-defendant, pursuant to or in furtherance of the alleged conspiracy charged in said counts.

WHEREFORE: Defendant moves the Court either to dismiss said Indictment or in the alternative, to require the Government to furnish a Bill of Particulars setting forth the particular matters hereinbefore specified.

ROBERT L. FLOYD and EDWARD F. BOARDMAN
By Edward F. Boardman
Of Counsel.

IN UNITED STATES DISTRICT COURT

Motion of Jay G. Williams to Dismiss—

Filed March 31, 1949

The Defendant, JAY G. WILLIAMS moves that the indictment and each count thereof, jointly and severally, be dismissed on the following grounds:

(1) That said indictment does not state facts sufficient to constitute an offense against the United States of America.

2) The indictment fails to charge any crime under Title 18, United States Code, Crimes and Criminal Procedure which was enacted into positive law of the United States of America as of September 1, 1948.

3) Said Section 51, Title 18, United States Code (1946 Ed.) is unconstitutional because it is vague, uncertain, indefinite and insufficient, and an Indictment based thereon does not apprise a defendant of the true cause and character of the accusation he is called upon to defend, and for that a
12 conviction or acquittal under an Indictment based on said Section would subject the defendant to substantial danger of another prosecution for the same offense.

4) It affirmatively appears from said indictment that the defendant, JAY G. WILLIAMS has not violated any laws of the United States of America.

5) That each of said counts charges no more than an assault and battery of which this Court has no jurisdiction.

6) That heretofore to-wit, an indictment was filed against the defendant, JAY G. WILLIAMS, JOSEPH V. PERRY, JOHN S. BOMBACI, CHARLES R. FORD, ANDREW J. YUHAS and LINDSLEY LUMBER CO., A corporation, in this Court by the United States of America as plaintiff in case No. 7279-M-Criminal, charging violation of Title 18 U. S. C., Sections 51 and 52 Civil Rights (1946 Ed.), and the said defendants after being arraigned and having pled not guilty to said indictment in said case numbered 7279-Miami-Criminal of this Court, were, on January 17, 1949 tried before a jury duly empaneled and sworn to try said cause, and on January 21, 1949, a verdict of guilty was returned by said jury as to JAY G. WILLIAMS on Counts numbered 2, 4, 6 and 8 of the said indictment in case No. 7279-M.-Criminal, and that the said jury was unable to agree to any said defendant in said case No. 7279-M-Criminal on Counts 1, 3, 5 and 7 of said indictment, and that on February 11, 1949 as to JAY G. WILLIAMS in said case No. 7279-M-Criminal, this Court entered judgment and commitment of one (1) year on each count of said indictment, that is to say, counts 2, 4, 6 and 8, to

run consecutively as to said JAY G. WILLIAMS, or a four-year sentence in all. A copy of said indictment in said case No. 7279-M-Cr. being attached hereto and made a part of this Motion to Dismiss as though the same were fully set out herein,

13 and that said judgment and conviction still remains in full force and effect and not in the least reversed or made void.

And the said defendant, JAY G. WILLIAMS, in the instant case is one and the same person as the defendant in this cause, as are the other individual defendants herein.

That the Indictment under which this defendant, JAY G. WILLIAM was convicted, contains the same offense under its general charges in the said four (4) counts in Case No. 7279-M-Cr., that is to say, Counts numbered 2, 4, 6 and 8, and that the charge made in the said four counts of the indictment in case numbered 7279-M-Cr. is also included within the indictment in the instant case, and that the said defendant, JAY G. WILLIAMS having been convicted under the prior indictment in case No. 7279-M-Cr. herein, ought not to be convicted under the indictment in the instant case, nor should the said defendant, JAY G. WILLIAMS be tried successively, and the said defendant, JAY G. WILLIAMS alleges that the evidence necessary to support this indictment herein, would have been sufficient to procure the conviction of this defendant under the first indictment, as all charges against the defendant, JAY G. WILLIAMS are based upon the same act, and that therefore, this second prosecution by this indictment ought to be dismissed against the defendant, JAY G. WILLIAMS.

The defendant, JAY G. WILLIAMS, because of the above facts showing former jeopardy that the defendant's constitutional rights under the Fifth Amendment to the Constitution, are being violated herein, and prays that he may be dismissed and discharged from said indictment.

Bart A. Riley
A. C. Dressler
Of Counsel
Attorneys for Defendant,
JAY G. WILLIAMS

14 IN UNITED STATES DISTRICT COURT

Motion of Jay G. Williams to Compel Government to Elect—Filed March 31, 1949

COMES NOW the defendant, JAY G. WILLIAMS, by his undersigned Counsel and represents that:

1) Prior to the return and filing of the indictment in the instant case, this defendant with JOSEPH V. PERRY, JOHN

S. BOMBACI, CHARLES R. FORD, ANDREW J. YUHAS, and LINDSLEY LUMBER CO., a corporation in Case No. 7279-M-Cr pending in this Court were defendants and UNITED STATES OF AMERICA was plaintiff, and the said defendants were arraigned and pled not guilty and went to trial in Case No. 7279-M-Cr. on January 17, 1949, and on January 21, 1949 and the jury returned a verdict of guilty as to said JAY G. WILLIAMS on Counts numbered 2, 4, 6 and 8 of the indictment, and that the jury were unable to agree as to the guilt of any defendant on Counts 1, 3, 5 and 7 in said case numbered 7279-M-Cr. and returned their verdict of not guilty as to the remainder of the said defendants other than JAY G. WILLIAMS on Counts 2, 4, 6 and 8. That on February 11, 1949, judgment of conviction was entered by this Court and this defendant was sentenced to one year on each of said four counts; said sentences to run consecutively for a total of four (4) years.

2) The said defendant respectfully shows that there is also pending in this Court the case of UNITED STATES OF AMERICA vs. JAY G. WILLIAMS, JOSEPH V. PERRY, HENRY B. GIROUX, JOHN S. BOMBACI, CHARLES R. FORD and ANDREW J. YUHAS, being cause numbered 7240-M-Cr. of this Court, and that the above indictments, including the instant case attempt to charge this defendant with the commission of the same acts and offense in violation of Section 51, Title 18, U. S. C., (1946 Ed.) as may be seen from an examination of the Court Files of the respective cases and indictments hereinabove mentioned, which are
15 made a part hereof by reference; that this defendant has in his Motion to Dismiss, filed herein, set forth that the indictment in the instant case herein, ought to be dismissed because of the former conviction of this defendant in Case No. 7279-M-Cr., and that this defendant is now confronted, before the argument of his motion to dismiss in the instant case, with the said indictments in the remaining two cases now pending against him as aforesaid, that is to say, cases No. 7279-M-Cr. and No. 7240-M-Cr., and the prisoner having already put in his plea of not guilty in case No. 7240-M-Cr. and No. 7279-M-Cr., that this defendant would have great difficulty in going to trial in the instant case in availing himself of filing a motion to dismiss as to the remaining and untried counts of the indictments in No. 7279-M-Cr. and No. 7240-M-Cr cases of this Court as is now provided by the Rules of Criminal Procedure, to show his former jeopardy as a bar to the further prosecution of the said indictments and counts now remaining undisposed of in No. 7279-M-Cr. and No. 7240-M-Cr., and this defendant alleges

that should the Government proceed herein without being compelled to elect to dismiss the undisposed of indictments against him, that he would be greatly prejudiced in this cause and that such action would deny due process under the law.

WHEREFORE, this defendant moves the Court to enter an order herein requiring the District Attorney to elect under which of the above mentioned three (3) indictments he intends to proceed and to dismiss the other said indictments then remaining as to this defendant.

Bart A. Riley
A. C. Dressler
Of Counsel
Attorneys for Defendant,
JAY G. WILLIAMS

16 IN UNITED STATES DISTRICT COURT

Motion of Charles R. Ford to Strike—

Filed March 31, 1949

Charles R. Ford, one of the defendants named herein, by and through his undersigned attorney, respectfully shows that the indictment herein is replete with irrelevant, impertinent, improper and immaterial allegations, hereinafter set forth or described, which, if allowed to stand, will prejudice the defendant in his right to a fair trial, and that such matter should be stricken from the indictment.

1. That portion of each count of the indictment which describes and designates the defendants Jay G. Williams and Joseph V. Perry as being special police officers under written authority from the Director of Public Safety of the City of Miami, Florida, acting under the laws of the State of Florida and the ordinances and regulations of the municipality of Miami.

2. That portion of each count of the indictment which describes this defendant as a police officer employed by the municipality of Miami, State of Florida, acting under the laws of such State and the ordinances and regulations of such municipality.

3. That portion of each count of the indictment which purports to allege the rights and privileges secured and protected by the Fourteenth Amendment to the Constitution of the United States.

4. The words, "persons acting under color of the laws," or "acting under color of the law," wherever such words appear in the indictment.

6. That portion of each count of the indictment which reads as follows: "that the said conspiracy was formulated and

entered into by the defendant Charles R. Ford, while in the employ of the municipality of Miami, Florida, and while acting in his official capacity as aforesaid, and by the defendants, Jay G. Williams, and Joseph V. Perry, while acting in their official capacities as aforesaid.

Respectfully submitted,
John D. Marsh
John D. Marsh
Attorney for Defendant
Charles R. Ford.

Name and address of
defendant's attorney:
John D. Marsh,
1402 Dade County Courthouse,
Miami 32, Florida.

Receipt of a copy of the foregoing motion is hereby acknowledged this 31st day of March, 1949.

Fred Boots
Assistant United States
District Attorney.

IN UNITED STATES DISTRICT COURT

Motion of Charles R. Ford to Dismiss—Filed March 31, 1949

Charles R. Ford, one of the defendants above named, by and through his undersigned attorney, respectfully moves that the indictment in the captioned cause, and each count thereof, be dismissed, and in support of this motion assigns the following grounds:

1. The indictment does not allege facts which, if proved, would constitute a violation of the laws of the United States.

2. The indictment attempts to charge this defendant with conspiring with others to deprive persons named in the indictment of certain mentioned rights and privileges alleged to be secured to such named persons and protected by the Fourteenth Amendment to the Constitution of the United States; whereas such Amendment does not secure to such persons nor protect the rights and privileges mentioned in such indictment.

3. The indictment is duplicitous in that each count thereof contains the elements of offenses defined by both Sections 51 and 52 of Title 18, United States Code; that it is replete with allegations pertinent only to the offense defined by such Section 52 of Title 18 and wholly irrelevant to the offense defined by Section 51 of such Title 18.

4. The indictment is so framed and so worded, being replete with inconsequential, irrelevant, impertinent and duplicitous

matter, as well as with conclusions, especially unwarranted conclusions as to the rights and privileges alleged to be secured and protected by the Fourteenth Amendment to the Constitution of the United States, and is so vague, uncertain and confused, as to hinder and embarrass this defendant in the preparation of his defense, and considered together, will work to the prejudice of the defendant in his right to a fair trial upon the issues involved in this cause.

5. The indictment is based upon an Act which has been repealed and which had been repealed at the time the indictment was found.

6. The third and fourth counts of the indictment attempt to charge an offense impossible of commission, that is, conspiracy to commit an act prior to the date of such alleged conspiracy, or conspiracy to have done an act.

Respectfully submitted,
John D. Marsh
John D. Marsh
Attorney for Defendant
Charles R. Ford.

Name and address of
defendant's attorney:
John D. Marsh,
1402 Dade County Courthouse,
Miami 32, Florida.

Receipt of a copy of the foregoing motion is hereby acknowledged this 31st day of March, 1949.

Fred Botts

Assistant United States
District Attorney.

19 IN UNITED STATES DISTRICT COURT

Motion of Charles R. Ford to Compel Election—
Filed March 31, 1949

The defendant Charles R. Ford, by and through his undersigned attorney, respectfully shows that there are now pending in this Court three indictments, one being that in the above entitled cause, the others being entitled United States of America vs. Jay C. Williams: Joseph V. Perry; Henry B. Giroux; John S. Bombaci; Charles R. Ford and Andrew J. Yuhas, being cause numbered 7240-M-Cr., and United States of America vs. Jay G. Williams; Joseph V. Perry; John S. Bombaci; Charles R. Ford; Andrew J. Yuhas and Lindsley Lumber Co., a corporation, being cause numbered 7279-M-Cr.,

respectively; that all three of the mentioned indictments attempt to charge this defendant with the commission of the same acts and offenses in violation of Section 51, Title 18, United States Code (1946 Ed.), as may be seen from an examination of the court files of the respective cases hereinabove mentioned, which are made a part hereof by reference; that an acquittal or conviction under any one of the mentioned indictments, in so far as they allege violations of the said Section 51, Title 18 of the United States Code, should preclude prosecution, in so far as this defendant is concerned, under any of the other mentioned indictments; that this defendant is entitled and he desires to know under which of the said indictments it is the District Attorney's intention to proceed and to have the other said indictments dismissed, a nolle prosequi entered or such other appropriate action taken as to apprise this defendant of the Government's intention regarding such indictments.

Wherefore, this defendant moves the Court to enter an order herein requiring the District Attorney to elect under which of the mentioned indictments he intends to proceed and to dismiss the other said indictments or take such appropriate action regarding them as is deemed by the Court to be just and proper.

20

Respectfully submitted,
John D. Marsh
John D. Marsh
Attorney for Defendant
Charles R. Ford.

Name and address of
defendant's attorney:
John D. Marsh,
1402 Dade County Courthouse,
Miami 32, Florida.

Receipt of a copy of the foregoing motion is hereby acknowledged this 31st day of March, 1949.

Fred Botts
Assistant United States
District Attorney.

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IN UNITED STATES DISTRICT COURT

Orders on Motions—April 5, 1949

On April 5, 1949 Order denying the foregoing motions and compelling Government to elect as to certain prosecutions was filed in words and figures as follows:

All pending motions in this case came on to be and were heard on April 2, 1949, and taken under advisement.

The District Attorney at the hearing announced that he was entering a nolle prosequi as to Case No. 7240-M-Criminal. This should be done of record in the Clerk's office within 5 days.

All motions to require the Government now to elect are denied, but the Government is ordered to elect to prosecute either this case or case No. 7270-M-Criminal within 5 days, this election to be by filing a written election in the Clerk's office.

The Government is ordered to state by bill of particulars if an expressed written agreement is relied upon, and if so to particularize the writing or writings so expressing same. This is to be done by April 7, 1949.

21 All motions not particularly noted in this order are denied.

DONE AND ORDERED at Miami, Florida this 4th day of April, 1949.

JOHN W. HOLLAND
United States District Judge

IN UNITED STATES DISTRICT COURT

Order Correcting Order of April 4, 1949

On April 5, 1949 Order correcting Paragraph 3 of Order dated April 4th, 1949 was filed in words and figures as follows:

The order entered by the court in this case on April 4, 1949, is corrected as follows:

The third paragraph of the order to read:

All motions to require the Government now to elect are denied, but the Government is ordered to elect to prosecute either this case or Case No. 7279-M-Criminal within 5 days, this election to be by filing a written election in the Clerk's office.

DONE AND ORDERED at Miami, Florida, this 5th day of April, 1949.

JOHN W. HOLLAND
United States District Judge

IN UNITED STATES DISTRICT COURT

Government's Election—April 7, 1949

On April 7, 1949 the Government elected to proceed to trial in case No. 7334-M-Criminal.

IN UNITED STATES DISTRICT COURT

Motion to Amend Motion to Dismiss Indictment—Filed April 14, 1949

Charles R. Ford, one of the defendants above named, by and through his undersigned attorney, respectfully shows that copy of the indictment herein and notice of arraignment was served upon him on March 22, 1949; that he was unable to engage counsel until March 23, 1949 and that his arraignment under the indictment was noticed for and held on March 25, 1949.

22 On March 25, 1949 at the arraignment of this defendant the Court announced that the defendant be granted to and including March 31, 1949 within which time to file such motions as he was advised to the indictment.

On March 24, 1949 this defendant did file, among other pleadings, a motion to dismiss the indictment, which motion was argued on April 2, 1949 and subsequently denied.

The defendant respectfully shows that the indictment herein involves numerous questions of law; that many of such questions are complex and require considerable research; that since the filing of the defendant's motion to dismiss, counsel for the defendant has considered the law involved in this cause to a further extent and has determined, as the result of such further consideration, that the indictment should be dismissed for a reason and upon a ground other than those stated in his previous motion to dismiss.

WHEREFORE, this defendant respectfully moves that he may be permitted to amend his motion to dismiss the indictment by adding thereto a further ground set forth in the copy of such proposed amendment which is attached hereto and made a part hereof by reference, and the defendant further moves that he be permitted to make such amendment without abandoning or abrogating any of the grounds set forth in his original motion to dismiss.

Respectfully submitted:
John D. Marsh
John D. Marsh
1402 Courthouse
Miami 32,
Attorney for Defendant
Charles R. Ford

Received a copy of the foregoing Motion this 14th day of April, 1949.

Fred Botts
Assistant United States District Attorney
By L. B. Eberhart, Clerk

23 IN UNITED STATES DISTRICT COURT

Amendment of Charles R. Ford to Motion to Dismiss

Charles R. Ford, one of the Defendants above named, by and through his undersigned attorneys, without abandoning or abrogating his motion to dismiss heretofore filed in this cause or any of the grounds thereof, amends such motion by adding thereto, and in support thereof, the following ground, designated 7,

7. This Defendant has been tried in this Court under an indictment Number 7279-M-Cr., entitled United States of America vs. Jay G. Williams; Joseph V. Perry; John S. Bombaci; Charles R. Ford; Andrew J. Yuhas and Lindsley Lumber Co., a corporation, a copy of which is attached hereto and made a part hereof by reference.

Counts numbered one, three, five and seven of the mentioned indictment are in all material respects identical to the counts of the indictment in the instant case and allege conspiracies to commit the overt acts alleged in counts numbered two, four, six and eight of the indictment in cause numbered 7279-M-Cr.

In the course of the trial held in cause numbered 7279-M-Cr. the Court delivered instructions to the jury which included the following instructions found on Pages 18 and 19 of the Jury Charge,

"That expression of 'color of law' does not mean that in your consideration of these counts, you should be bound by the question of whether every one of the defendants charged in these counts was a police officer. It is my recollection that under the evidence there is no proof that Bombaci was an officer, and certainly Yuhas was not any kind of any officer, and of course the corporation was not an officer. But I wish to call your attention in that connection to what is known as the Federal 'aiding and Abetting' statute.

24 You will note from the indictment that Yuhas and the corporation are indicted for aiding and abetting, but that really makes no difference in view of the statute which I am about to read to you, which is as follows: 'Whoever directly commits any act constituting an offense defined in any law of the United States, or aids, abets, counsels, commands, induces, or procures its commission, is a principal.

"I can't make it too emphatic to you, gentlemen, that mere presence when a crime is committed is, of course, not sufficient to render one guilty as aider or abettor. The fact that a person is present when a crime is committed and no more is not sufficient to convict him. There must be something to show that the person present and so charged, in some way

procured, or incited or encouraged, the act done by the actual perpetrator. But whether a person does in fact aid or abet another in the commission of a crime is a question for you to determine, from the circumstances of the case as well as the direct evidence."

And again on Page 29 of the Jury Charge, the following instruction is found,

"I think I have already made it clear to you that if a person is present and aids and abets and encourages and any way assists them, he is guilty of the crime."

And again, in response to a question by one of the jurors, which is quoted below, the Court delivered a further charge, which is set forth below:

"ONE OF THE JURORS: I think that one of the
25 major points of the case at issue among the jury men is, if a person is present—which no doubt you remember as being brought out in this case—must that person be found guilty or not guilty, due to his presence in the room?

"THE COURT: I think it would help you to know the exact language of the statute, and the exact language of the statute is this: 'Whoever directly commits any act constituting an offense defined in any law of the United States, or aids, abets, counsels, commands, induces, or procures its commission, is a principal.'

"Mere presence when a crime is committed is, of course, not sufficient to render one guilty as aider or abettor. There must be something to show that the person present and so charged, in some way procured, or incited, or encouraged, the act done by the actual perpetrator. But whether a person does in fact aid or abet another in the commission of a crime is a question for the jury, which may be determined by circumstances as well as by direct evidence.

"I don't know if I gave you any examples or not. If you and I are walking down the street and we see some person coming along, and you say, 'I am going to hold that person up,' and possibly you yank out a gun and possibly do it. The fact that I am standing there and do not stop you would not make me guilty. But if I do anything—I don't have to grab him. I don't have to hit the person—but if I do anything to encourage it; if I should say, for instance, 'Go
26 ahead. I'll watch'—or—'Well, that's a good idea.' If I do anything to aid, abet, encourage or counsel, that would make me guilty as a principal."

The Court delivered a further instruction to the jury in

response to a question by one of the jurors. The question and instruction, found on Page 37 of the Jury Charge are as follows:

"ONE OF THE JURORS: The mere presence of a man does not necessarily imply that he aided or abetted, does it?

"THE COURT: No, sir it does not. The mere fact that a man was present is not sufficient to convict him. If a man was merely present where a crime was committed, you should not convict him. If he is present and in any way aided, abetted, encouraged, or gave counsel, then he would be guilty and should be convicted."

At the conclusion of the taking of evidence and after receiving the instructions of the Court in cause numbered 7279-M-Cr. the jury returned a verdict finding this defendant not guilty of the charges laid under counts two, four, six and eight of the indictment. A copy of this verdict is attached hereto and made a part hereof by reference. The jury further reported an inability to agree as to counts numbered one, three, five and seven of the indictment and were discharged.

This defendant respectfully submits that, in view of the instructions to the jury quoted above, any verdict other than one of not guilty, in the case at bar, as to any of the counts under the indictment herein sought to be dismissed, would be in direct conflict with and inconsistent to the verdict in cause numbered 7279-M-Cr. and that the questions of fact raised by the several counts of the indictment in the case at bar have, by the verdict and judgment in cause numbered 7279-M-Cr.
been adjudicated favorably to this defendant and ad-
27 versely to the Government.

WHEREFORE, this defendant respectfully urges that this indictment be dismissed for the reason that to prosecute him under such indictment would be in violation of the Due Process Clause of the Fifth Amendment of the Constitution of the United States of America in that such prosecution is contrary to the common law principle of res judicata.

Respectfully submitted:
John D. Marsh
John D. Marsh
1402 Courthouse
Miami 32, Florida
Attorney for Defendant
Charles R. Ford

IN UNITED STATES DISTRICT COURT

Order Denying Motion of Charles R. Ford to Amend Motion to Dismiss—April 15, 1949

This cause coming on this day to be heard upon the motion of CHARLES R. FORD, one of the defendants, by his attorney, for leave to amend motion to dismiss the indictment in said cause and said motion having been presented to the Court, and the Court being fully advised in the premises, it is hereby

ORDERED that said motion be and the same is hereby DENIED, Exception is noted for the said defendant.

DONE AND ORDERED at Miami, Florida, this 15th day of April, A. D. 1949.

JOHN W. HOLLAND
UNITED STATES DISTRICT COURT

28 IN UNITED STATES DISTRICT COURT

Minute entry of Arraignment and Plea of Jay G. Williams

On April 18, 1949 the defendant, Jay G. Williams was duly arraigned and entered a plea of not guilty.

IN UNITED STATES DISTRICT COURT

Minute entry of Trial and Verdict

On April 18, 1949 a Jury was empaneled and the trial of this cause was commenced and the trial continued on April 19, 20, 21, and 22. On April 22nd a Verdict was rendered.

IN UNITED STATES DISTRICT COURT

Motion of Charles R. Ford for Judgment of Acquittal

On April 21, 1949 Motion of Charles R. Ford for Judgment of Acquittal was filed in words and figures as follows:

At the conclusion of the Government's case, after all of the evidence for the *prosecution* has been offered and after the United States District Attorney has announced that the Government rests, CHARLES R. FORD, one of the defendants herein, by and through his undersigned attorney, moves the Court for a judgment of acquittal for the following reasons and upon the following grounds:

1. The Government has failed to establish, by competent evidence, that this defendant is guilty of the offense charged.

2. The Government has failed to prove by competent evidence that this defendant participated in a conspiracy having as its object the commission of the acts alleged in the indictment.

3.

4. The Government has failed to prove that this defendant conspired with any of the others named in the indictment to wilfully deprive the complaining witnesses, or any of them, of the rights alleged in the indictment to be guaranteed by the Fourteenth Amendment to the Constitution of the United States.

5. It does not appear from the evidence adduced by the Government that this defendant conspired with the others named in the indictment, or any of them, to commit the acts alleged in the indictment while acting under any color of law.

6. By evidence which varies in no material respect from that which has been adduced at this trial by the Govern-
29 ment, this defendant was acquitted by a competent jury of this Court in cause numbered 7279-M-Cr. of the offense which is charged as the act which was the object of the alleged conspiracy.

Not only was this defendant found not guilty of actually committing the act so alleged but, under the Charge to the Jury delivered by the Court in the trial of that cause, this defendant was also found not guilty of aiding, abetting, encouraging, counseling, commanding, inducing, procuring, or in any way assisting any other person to commit that act.

In the trial of this cause, the Government has failed to offer any evidence which would add materially to that offered in the previous trial abovementioned or which would tend to further prove participation by this defendant in the commission of the act, which is alleged as the object of the conspiracy charged, or which would tend to prove that this defendant aided, abetted, encouraged, counseled, commanded, induced, procured, or in any way assisted any other person to commit that act.

Having once been acquitted by a competent jury of this Court of complicity in the commission of the substantive act here charged, upon evidence which is in all material respects the same as that adduced here, any verdict in this cause, other than one of not guilty, would be inconsistent with the verdict rendered at the previous trial abovementioned and it is respectfully suggested that the matters submitted here by the Government have already been adjudged to be in favor of this defendant and against the Government and are res judicata.

Respectfully submitted,
John D. Marsh
John D. Marsh
Attorney for the Defendant,
Charles R. Ford.

30 IN UNITED STATES DISTRICT COURT

Motion of Jay G. Williams for Judgment of Acquittal—Filed Apr. 21, 1949

At the conclusion of the Government's case, after all of the evidence for the prosecution has been offered and after the United States District Attorney had announced that the Government rests, Jay G. Williams, one of the defendant's herein, by and through his undersigned attorney, moves that the Court will order a verdict of not guilty as to him on each count of the indictment herein for the following reasons and upon the following grounds:

1. The Government has failed to establish, by competent evidence, that this defendant is guilty of the offense charged.

2. The Government has failed to proved by competent evidence that this defendant participated in a conspiracy having as its object the commission of the acts alleged in the indictment.

3. The Government has failed to prove that this defendant conspired with any of the others named in the indictment to wilfully deprive the complaining witnesses, or any of them, of the rights alleged in the indictment to be guaranteed by the Fourteenth Amendment to the Constitution of the United States.

4. It does not appear from the evidence adduced by the Government that this defendant conspired with the others named in the indictment, or any of them, to commit the acts alleged in the indictment while acting under any color of law of the State of Florida.

5. That there is not sufficient evidence to warrant his conviction of the alleged conspiracy.

6. The Government has failed to prove facts sufficient to constitute a prima facie case of the alleged conspiracy.

7. The Government has failed to prove by competent evidence that the defendant committed any of the acts alleged in the indictment while acting under any color of the laws of the State of Florida.

31 8. The Court abused its discretion in refusing the joint motion of the defendants that the jury be polled separately and examined as to whether or not they had each read the newspaper articles in The Miami Herald and The Miami Dailey News appearing therein after the jury had been empaneled and sworn, and whether or not they each had as a result thereof, if said articles were so read by any of them, formed an opinion that could be passed upon as a matter of law by the Court as to any prejudice therefrom resulting as to this defendant, or any other defendant.

9. That this defendant was not afforded due process of law under the Constitution of the United States because of the multiplicity of indictments filed against him by the Government based on the transactions and same alleged offenses shown in the indictment herein, including the filing of perjury charges against this defendant in case No. 7333 of this Court, and the Court abused its discretion in not declaring a mistrial herein as to this defendant, who has already been sentenced to a four year term in case No. 7279-M Criminal of this Court.

10. That this defendant was not afforded due process of law under the Constitution of the United States by the filing of unwarranted perjury charges against him in case No. 7333 and resulted in coercing the defendant not to make any defense herein for fear of further perjury charges being filed against him by the Government in any attempt to defend himself in the instant case.

A. C. Dressler
Attorney for Defendant
JAY G. WILLIAMS
1030 Seybold Building, Miami,
Florida.

32 IN UNITED STATES DISTRICT COURT

Requests to Charge

The third requested jury instruction of Charles R. Ford in words and figures as follows:

* * *

[Given with brackets omission and alterations JWH]

3. In a previous trial held in this Court, the defendants, JOSEPH V. PERRY, JOHN S. BOMBACI, CHARLES R. FORD, ANDREW J. YUHAS and DANIA SUPPLY CO. were found not guilty by a jury and acquitted of the offense which is made the substantive act in each of the counts of this indictment, that is the act which the defendants here are charged with having conspired to commit.

To put it another way, a competent jury of this Court has determined that the defendants, who I just named, did not wilfully, under color of the laws, statutes, ordinances, regulations, and customs of the State of Florida and of the municipality of Miami, subject and cause to be subjected FRANK J. PURNELL, JR., CHESTER M. ROBINSON, HENRY W. PRIEST and JOHN P. STURNIOLO, the complaining witnesses in the present trial, to deprivation of the rights, privileges and immunities secured to each of them and protected by the Fourteenth Amendment to the Constitution of the United States, to-wit, the right and privilege not to be de-

prived of liberty without due process of law, the right and privilege to be secure in their persons while in the custody of the State of Florida, the right and privilege not to be subjected to punishment without due process of law, the right and privilege to be immune, while in custody of persons acting under color of the laws of the State of Florida, from illegal assault and battery by any persons exercising the authority of said State, and the right and privilege to be tried by due process of law and, if found guilty, to be sentenced and punished in accordance with the laws of the State of
33 Florida, in that on or about March 28, 1947, the defendants arrested and detained and caused to be arrested and detained the complaining witnesses whom I have named, and brought and caused them to be brought to and into a certain building, sometimes called a shack on the premises of the Lindsley Lumber Co., at or near 3810 N. W. 17th Avenue, in Miami, Florida, and did there detain the complaining witnesses, and, while they were so detained, the defendants did then and there illegally strike, bruise, batter, beat, assault and torture the mentioned complaining witnesses, in order illegally to coerce and force them to make an admission and confession of their guilt in connection with the alleged theft of personal property, alleged to be the property of DANIA SUPPLY CO., doing business as LINDSLEY LUMBER CO., and in order illegally to coerce and force such complaining witnesses, and each of them, to name and accuse other persons of participating in alleged thefts of such personal property, and for the purpose of imposing illegal summary punishment upon such complaining witnesses.

(The verdict of the jury which I have mentioned forecloses the question of whether or not PERRY, BOMBACI, FORD, YUHAS and DANIA SUPPLY CO. did do the things which I mentioned above in their favor and against the Government, and you must consider that they did not commit these acts, and you must also consider that these defendants, who I have named, did not aid, abet, encourage, counsel, command, induce, procure or in any way assist any other person to commit such an act, so, in reaching a verdict in this case, you must take into consideration the fact that neither PERRY, BOMBACI, FORD, YUHAS and DANIA SUPPLY CO. did commit the substantive act charged as being the object of the conspiracy charged here, and that none of them aided, abetted, en-
34 couraged, counseled, commanded, induced, procured, or in any way assisted in the commission of that act.)

* * *

The third requested jury instruction submitted by all the defendants in words and figures as follows:

* * *

[given with editions JWH]

3. The section of the United States Code, under which this indictment is drawn, does not mention the word "intent", (nor does it mention the word "wilful";) nevertheless, I must instruct you that an offense, which is made a felony by law, cannot be committed without criminal or felonious intent. An act, which is committed without criminal intent, is not a crime and so, in this case, it is necessary that criminal intent be proved in order that a conviction may be found. In other words, it is not sufficient that the Government merely prove that a conspiracy was formed by these defendants to do a certain thing, but it must also be proved that the defendants, or at least two of them, criminally intended to enter into the conspiracy, and intended, as the object of that conspiracy, to do a criminal act. (In this case, you must find a further fact that they intended wilfully to do the act which was the object of the conspiracy.)

(Now, the word "wilfully" has a meaning, and a very definite meaning, that must be carefully considered by you. In law, the use of the words, "wilful" and "wilfully", imply a conscious purpose to do wrong. Doing a thing knowingly and wilfully implies not only a knowledge of the thing done, but a determination to do it with bad intent or with an evil purpose or motive.) (It is not sufficient that the defendants here had generally a bad purpose in doing the things they are alleged to have done, or that they went too far because of an excess of zeal in their desire to obtain confessions from the complaining witnesses.) In order to convict under this indictment, it is necessary for the jury to find that the defendants had in mind the specific purpose of depriving the complaining witnesses of those rights guaranteed them under the Fourteenth Amendment to the Constitution of the United States, which are enumerated in the indictment while acting under color of the laws of the State of Florida.

The proof, if any, of a general intent to do the complaining witnesses a wrong is not sufficient, but a specific intent to deprive them of a Constitutional right, as the object of the conspiracy, if any, is a burden the law casts upon the Government. In considering whether the defendants had such specific intent, you may take into consideration all the circumstances of the case in the light of the evidence as it has been developed.

Now, "intent" is something that exists in a man's mind. It is impossible for you to enter into a man's mind or into

the mind of defendants to determine the intent with which they acted. Therefore, their intent has to be judged by their intelligence, as shown by the evidence, by their experience in life, as shown by the evidence, and generally by judging them as reasonably prudent persons, experienced in the affairs of everyday life, judge each other, and it is the law that a person intends the usual consequences of his acts.

Neither color of law nor specific intent may be presumed by you gentlemen of the jury, but both color of law and specific intent must be proven by the Government beyond a reasonable doubt.

36 To return a verdict of guilty, under this indictment, you must therefore answer the following question in the affirmative:

Did the defendants, or any two or more of them, knowingly and intentionally enter into a conspiracy with the specific intent, (wilfully) and knowingly, and while acting under color of the laws of the State of Florida, to deprive the prosecuting witnesses, or any of them, of those rights and privileges guaranteed them under the Fourteenth Amendment which are enumerated in the indictment.

John D. Marsh
Attorney for Charles R. Ford
John S. Bombaci
In Proper Person
Robert L. Floyd
Attorneys for Joseph V. Perry

A. C. Dressler
Attorney for Jay G. Williams
Ed Strickland
Ernest E. Roberts
Attorneys for Andrew J. Yuhas and Dania Supply Co.

37 In the United States District Court in and for the Southern District of Florida

United States of America
versus

Jay G. Williams; Joseph V. Perry, John S. Bombaci; Charles R. Ford, Andrew J. Yuhas and Dania Supply Co., a Florida corporation doing business as Lindsley Lumber Co.

VERDICT—APRIL 22, 1949

Miami, Florida
April 22, 1949

We, the Jury, find the defendant, Jay G. Williams, Guilty
and the defendant, Joseph V. Perry, Guilty
and the defendant, John S. Bombaci, Guilty
and the defendant, Charles R. Ford, Guilty
and the defendant, Andrew J. Yuhas, Guilty

and the defendant Dania Supply Co., a Florida corporation, doing business as Lindsley Lumber Co., Guilty

So say we all.
G. B. Certain
Foreman.

38 IN THE DISTRICT COURT OF THE UNITED STATES

FOR THE SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION.

UNITED STATES OF AMERICA

VS.

JAY G. WILLIAMS, JOSEPH V. PERRY, JOHN S. BOMBACI, CHARLES R. FORD, ANDREW J. YUHAS and DANIA SUPPLY CO., d.b.a. LINDSLEY LUMBER CO.,

Defendants.

No. 7334-M-Cr.

STATEMENT OF EVIDENCE

Miami, Florida,
Monday, April 18, 1949.

The above-entitled cause came regularly on for trial before the Honorable John W. Holland, United States District Judge, and a jury, duly impanelled and sworn to try the same, in open court, at Miami, Florida, on Monday, April 18th, 1949, at 9:30 o'clock a.m.

APPEARANCES:

Fred Botts, Assistant District Attorney, on behalf of the Government.

A. C. Dressler, Esq., of the firm of Riley & Dressler, on behalf of Defendant Jay G. Williams.

Robert L. Floyd, Esq., and Edward F. Boardman, Esq., on behalf of Defendant Joseph V. Perry.

Defendant John S. Bombaci appearing in his own behalf.

42 John D. Marsh, Esq., on behalf of Defendant Charles R. Ford.

Ernest E. Roberts, Esq., and Edwin E. Strickland, Esq., on behalf of Defendants Andrew J. Yuhas and Dania Supply Co., d.b.a. Lindsley Lumber Co.

(A jury was then duly and regularly impanelled and sworn.)

The Court: You may make your opening statements, gentlemen.

OPENING STATEMENT OF MR. BOTTS

Mr. Botts: Gentlemen, this indictment is the basis of the charge which is being presented to you. This indictment, as you will notice when you examine it, was returned by a grand jury. That is merely the charge. The fact that that was returned on evidence deemed by a grand jury to be sufficient to return an indictment, no inference is to be drawn from that circumstance here. The indictment is in four counts. Count One I will read to you, and then can very quickly indicate the only one difference between that and the other counts: "On or about the 28th day of March, 1947, in the Southern District of Florida and within the jurisdiction of this Court, Jay G. Williams—" That is not a capital "J"; it is spelled J-a-y. "—Jay G. Williams and Joseph V. Perry, both being then and there special police officers under written authority
43 from the Director of Public Safety of the City of Miami, Florida, acting under the laws of the State of Florida, and the ordinances and regulations of the municipality of Miami creating the office and position of special police officer and prescribing the duties of said office and position, and Charles R. Ford, who was then and there a police officer employed by the municipality of Miami, State of Florida, acting under the laws of the State of Florida, and the ordinances and regulations of the municipality of Miami, Florida, creating the office and position of police officer and prescribing the duties of said office and position, John S. Bombaci, Andrew J. Yunas and Dania Supply Co., a Florida corporation, doing business as Lindsley Lumber Co., all of the above named persons being the defendants herein, conspired to injure, oppress, threaten, and intimidate Frank J. Purnell, Jr., a citizen of the United States and of the State of Florida, in the free exercise and enjoyment of the rights and privileges secured to him and protected by the Fourteenth Amendment to the Constitution of the United States, to-wit, the right and privilege not to be deprived of liberty without due process of law, the right and privilege to be secure in his person while in the custody of the State of Florida, the right and privilege not to be subjected to punishment without due process of
44 law, the right and privilege to be immune, while in the custody of persons acting under color of the laws of the State of Florida, from illegal assault and battery by any person exercising the authority of said state, and the right and privilege to be tried by due process of law and if found guilty to be sentenced and punished in accordance with the

laws of the State of Florida, that is to say—" This is explanatory of the conspiracy. "—it was the plan and purpose of said conspiracy that on or about the 28th day of March, 1947, the said defendants would arrest and detain and cause to be arrested and detained the said Frank J. Purnell, Jr., and would cause the said Frank J. Purnell, Jr., to go to and into a certain building sometimes called a shack on the premises of the said Dania Supply Co., at or near 3810 Northwest 17th Avenue, in said City of Miami and that they would detain the said Frank J. Purnell, Jr., in said shack and, while the said Frank J. Purnell, Jr., was so detained, the said defendants, or some of them, would then and there illegally strike, bruise, batter, beat, assault, and torture the said Frank J. Purnell, Jr., in order illegally to coerce and force the said Frank J. Purnell, Jr., to make an admission and confession of his guilt in connection with the alleged theft of personal property
45 alleged to be the property of the said Dania Supply Co., doing business as Lindsley Lumber Co., and in order illegally to coerce and force the said Frank J. Purnell, Jr., to name and accuse other persons as participants in alleged thefts of personal property alleged to be the property of the said Dania Supply Co., doing business as Lindsley Lumber Co., and for the purpose of imposing illegal summary punishment upon the said Frank J. Purnell, Jr; that the said conspiracy was formulated and entered into by the defendant Charles R. Ford, while in the employ of the municipality of Miami, Florida, and while acting in his official capacity as aforesaid, and by the defendants, Jay G. Williams and Joseph V. Perry, while acting in their official capacities as aforesaid."

The other three counts of that indictment, Gentlemen, are identical in words with the first count, except that it is charged that the person alleged to have been beaten and abused was Chester M. Robinson, that in the next count the person was Henry W. Priest, and in the fourth count that the person alleged to have been abused was John P. Sturniolo. It is charged it was on or about a certain date. I think the evidence will show, Gentlemen, as to Robinson and Purnell that the alleged beating took place on the 28th day of March of the year 1947, that with reference to Mr. Priest it was on the 27th of March, and with reference to Sturniolo that it was
46 both, I think, either the 26th or 27th and also on the 28th, that little change in date; other than that the charge is the same.

Now, Gentlemen, I want to emphasize this fact: What I say to you is no more evidence than the contents of this indictment, and I am merely outlining what we propose to prove in order to assist you in understanding and applying that evidence if

it is produced, but the fact that I state that that is our intention carries no weight whatever, so far as you are concerned, but is merely an attempt, as I say, to assist you in understanding.

The Government will offer testimony tending and intended to establish this general situation, that the Lindsley Lumber Company is a substantially large dealer in lumber and building supplies, having a number of places of business, at least two or perhaps more in the City of Miami, having a place of business in Hollywood, I believe, perhaps in Fort Lauderdale, and other places, that this company conceived the thought and, so far as I know, in good faith believed that certain depredations were being committed with respect to their property, because they claimed or believed that they had suffered losses by theft, that they suspected that some of the losses which they believed they were sustaining might have occurred through the cooperation or agency of some of their employees,
47 names unknown to them, and having such a belief that they employed a socalled private detective agency operated by Mr. Williams, one of the defendants here; the name under which he was doing business has for the moment escaped me; I believe it was the Continental Detective Bureau or Continental Detective Agency, or something of that kind, having an office here in Miami; that Mr. Williams and his company were employed to try and ascertain the facts with reference to these losses which the company believed it had sustained and was, perhaps, sustaining from time to time; Mr. Williams had a number of employees, notably Mr. Perry and Mr. Bombaci and a man named Giroux. These men were by Mr. Williams and with the cooperation of the Dania Supply Company, which is commonly known here as the Lindsley Lumber Company, given a certain status, by which it was that they could, at least in some instances, pose as employees of the company—that notably applies to Mr. Giroux—and that these men pursued a course of investigation for the purpose of trying to detect and ascertain as to whether or not theft and peculations were occurring and, if so, who was responsible for them; that after this investigation had been pursued for some considerable time, with what degree of success the evidence will probably apprise you, Mr. Yuhas, one of the defendants here, occupying the position of Comptroller,
48 I believe it was, an employee having that designation of Comptroller, was assigned to cooperate with these detective agency operatives and as a sort of liaison, apparently, between the company and these operatives, that upon the days mentioned, the 27th or 28th of March, 1947, notably, these operatives, with the managing owner, Mr. Williams, and in the presence of Mr. Yuhas, alleged to be the

representative of the Dania Supply Company, invited, or, not to use that term, in some way procured a number of their employees who were under suspicion to enter a certain small wooden frame building on the premises and a part of the property of the Dania Supply Company on Northwest 17th Avenue, about the 3800 block, that while they were in there, at least during all that took place on the 28th day and some that took place on the 27th day, the defendant Charles R. Ford was present, that Mr. Ford was a police officer on active duty at the time, and that he was out there present. Evidence will be offered tending to show that on various times these men, these various person, that is, Purnell, Robinson, Priest, and Sturniolo, being individually present in that building, no two of them ever being in the building at one time, that these men were unmercifully flogged, beaten and abused, and that while they were being so beaten, flogged, and so forth, Yuhas, Perry, Bombaci, Ford and Williams were all present,
not all being present every minute of all the time, but
49 during a substantial amount of the beatings it is alleged
that all of these five individual persons were present, that the actual physical beatings were, at least in large part, administered by the man Williams here, that he assaulted and beat these various men with his fist and with some sort of an instrument in the nature of a billy, either covered with rubber or leather and perhaps having the appearance and believed by the persons receiving the beatings to be a rubber hose, the exact nature of the implement not being capable of absolute, certain description, that at the time when these beatings were being administered to these four several and different persons the man Giroux was present and witnessed those beatings, and it will doubtless develop that Mr. Giroux has plead guilty to participating in that and being present when that was done, so that will come out in the evidence; he will be a witness testifying on behalf of the Government to what he saw take place in there; so that you will find that the evidence with reference to the individual beatings and to what actually took place from eye witnesses in there will be the persons alleged to have been beaten, and that testimony will be corroborated by Mr. Giroux, who was present while the beatings were being administered. In addition to that, the evidence
of some of the persons alleged to have been beaten,
50 who are alleged to have been outside of the room, will
be corroborative of some of the things that happened to others of the victims. I tried to avoid the use of that term "victim", but I use that as descriptive of the persons who are alleged to have been beaten, as a short term, but the use of that term should not carry any implication whatever; I had

up to that time avoided the use of that term, but it just slipped out of my mouth without intending to use that term "victim", and when I use that term that is what I refer to, and no implication or evidenciary force should be attached to the use of that term. The evidence will further show that these persons alleged to have been beaten were taken down and locked up and kept, with I think one exception, in confinement for various periods of time. While they were in confinement and afterwards and immediately following the dates when they allege they were beaten they were examined by various persons, members of their family, friends and acquaintances and the like, and in two instances by physicians, and their physical condition, showing marks that were indicative of such punishment as they allege they had suffered, were observed on the bodies of some of them—of all of them, and photographs were taken of some of them, which will be introduced in evidence here, or will be offered in evidence here, as indicative
51 of their condition. That will be corroborated by their allegations that they were abused. Those evidences of physical injury are not evidence against any of the alleged defendants unless the other evidence shall have connected them with it; that is merely evidence that they did suffer the injuries which they claim. The other evidence will be designed to show by what means they received those injuries and who was responsible for it.

Now, with reference to the Dania Supply Company, that is a corporation, and a corporation may be guilty of such an offense as this on trial the same as an individual, provided it through its responsible officers or agents assents to and cooperates with the persons who actually committed the acts, if such were committed, and they thereby become criminally responsible if they are in fact cooperative in the result that transpired. So with reference to the Dania Supply Company, which will mostly be referred to as the Lindsley Lumber Company, which was the trade name under which it was operating, if you find, for example, that Mr. Yuhas was their agent in this connection that would be sufficient for you to consider the question of their guilt.

I hope, Gentlemen, that that will assist you in understanding the evidence.

Now, just one more thing about the charge. It is
52 charged that the conspiracy was to deprive them of certain rights which are guaranteed to them by the Constitution of the United States. Now, you are not to consider the legal questions, because the Court will charge you, and the courts have decided that these various things are rights which have been protected, are guaranteed and protected, by

the Constitution. So that you will understand it, these rights are five different ones. They are closely kindred, or, rather, are connected, and so forth. One of them is the right and privilege not to be deprived of liberty without due process of law, the right and privilege to be secure in his person while in the custody of the State of Florida, acting through its officers and agents, such as police officers, special police officers, and the like, the right and privilege not to be subjected to punishment without due process of law, the right and privilege to be immune while in custody of persons acting under color of the laws of the State of Florida, from illegal assault and battery by any person exercising authority of said state, and the right and privilege to be tried by due process of law and if found guilty to be sentenced and punished in accordance with the laws of the State of Florida. Those are the various things which are, as the Court will tell you, guaranteed by the Constitution. You will be asked to try the question as
53 to whether or not the things that it is alleged were done had a tendency to or were calculated to deprive these allegedly injured parties of those rights which are, in fact, guaranteed to them under our Constitution.

COLLOQUY BETWEEN COURT AND COUNSEL

Mr. Dressler: I wish to object to the form of the statement made by Mr. Botts, in that it is not a fair statement of the actual issues before this jury. Mr. Botts has formulated the opening statement in the form of a substantive charge, which is not before this jury as such. This is a conspiracy case, under the conspiracy statute. I think the Court should so have Mr. Botts explain, or the Court should explain.

Mr. Botts: I concede you are correct. This is not a charge that these men were beaten; in other words, the charge is that there was a conspiracy among these men, or some one or more of them, to deprive these persons of the rights which I have explained. Now, the beatings, if you find from the evidence that they were beaten, is not the charge that you are trying, but will be introduced merely as evidence that a conspiracy existed. So you are trying the question as to whether or not there was a conspiracy, and not the substantive charge. I didn't explain that before, because I was discussing the evidence and not the law, but counsel is correct, that it is a
54 charge of conspiracy and not of the substantive offense.

The Court: Any opening statement from the defendants now?

Mr. Dressler: On behalf of the defendants who are represented by counsel, I wish to state that each of the several de-

fendants will reserve making their statements until a later time, at the close of the Government's case.

Mr. Botts: I would ask the Court to inquire if Mr. Bombaci desires to make a statement at this time.

The Court: Mr. Bombaci, if you want to make a statement you may.

Mr. Bombaci: No, sir. I reserve the right, sir.

The Court: We will run until twelve-thirty, and then take a recess until two o'clock.

Mr. Botts: We will call Frank J. Purnell, Jr. Mr. Floyd just made a suggestion, with which I am in accord, to start in and go for ten minutes with this witness, who will be a very long witness, it would be much better to adjourn now and come back ten minutes early, or just adjourn now until two o'clock.

The Court: We will take a recess at this time. Gentlemen of the Jury, I need not call your attention every time to the observance of the instructions that have been given you, but you will observe those instructions throughout the trial. We will take a recess until ten minutes of two.

(A recess was then taken until 1:50 p.m. of this date.)

55

AFTERNOON SESSION

Miami, Florida,
April 18th, 1949,
1:50 o'clock p.m.

(Trial resumed pursuant to noon recess)

The Court: Mr. Clerk, will you poll the jury?

Mr. Botts: If the Court please, I observe that counsel for one defendant doesn't seem to be here, Mr. Floyd.

Mr. Boardman: We will proceed on behalf of Mr. Perry.

Mr. Botts: You are willing to proceed without Mr. Floyd?

Mr. Boardman: Yes, sir. He will be here later.

(The Clerk then polled the jury.)

FRANK J. PURNELL, JR., was thereupon called as a witness on behalf of the Government, and having been first duly sworn, testified as follows:

DIRECT EXAMINATION

Q. (By Mr. Botts) State your name.

A. Frank J. Purnell, Jr.

Q. Where do you live, Mr. Purnell?

A. At the present time 54 Northwest 34th Street.

Q. Miami, Florida?

A. That is right; yes, sir.

56 Q. How old are you?

A. Thirty-one years old.

Q. Where were you born?

A. Savannah, Georgia.

Q. How are you employed at this time?

A. I am a salesman for Mozart Jalousy Company.

Q. How long have you been in that employment?

A. About a month.

Q. Prior to that time how were you employed?

A. As street sales manager for the Miami Daily News.

Q. Do you know the firm the corporate name for which I believe is the Dania Supply Company, but it is commonly known as Lindsley Lumber Company?

A. Yes, sir.

Mr. Botts: If you will, let the record show that I will use the name Lindsley Lumber Company, and wherever I use the name of Lindsley Lumber Company I am intending to refer to the organization the technical corporate name of which is Dania Supply Company.

Q. When were you first employed by the Lindsley Lumber Company?

A. About June, of 1946.

Q. How long did you continue in that employment?

A. Until March 28th, 1947.

57 Q. In March, of 1947, what was the nature of your employment or duties for that company?

A. I was a salesman.

Q. Does that company have more than one place of business, to your knowledge?

A. Yes, sir, it does.

Q. Where are those several places of business?

A. I am not acquainted with all their locations. I was employed at the 17th Avenue yard.

Q. You were employed at the 17th Avenue yard. They have one, I believe, out on Tamiami Trail about—

A. About 12th Avenue.

Q. I don't mean Tamiami Trail. I mean Coral Way, about 22nd or 27th Avenue?

A. That is right.

Q. Do they have a place of business in Hollywood, do you know?

A. Yes, sir, they do.

Q. Do you know whether they have one in Fort Lauderdale?

A. I believe they do; I am not sure.

Q. Do you know whether they have one on North Miami Avenue?

A. They do, yes, sir.

Q. Was this place out there at Northwest 17th Avenue in about the 3800 block—Do you know whether that was their largest—

58

A. To my knowledge, it was the largest yard they had.

Q. You don't know whether they treated that as their main headquarters or not, but it was the largest, was it?

A. Yes, sir.

Q. About the 28th day of March—

Mr. Dressler: We started off with his preliminary questions. We ask that the rule be imposed on this witness.

Mr. Botts: I suspected that they would do that at some time. So far as I know, none of the witnesses are in the courtroom. I didn't know whether you were going to waive that or not, but there are none in the courtroom now. May I suggest that I think the others will not come into the courtroom and let us not interrupt this witness to go through that formality with this witness. When we have completed with him then we have no objection to calling in any witnesses and invoking the rule and letting it be noted as being effective from the start, or if the Court thinks proper we can interrupt now. There are, in fact, none of the witnesses in the courtroom. I think I am correct in that, am I not, Mr. Mathews?

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Mr. Mathews: Yes, sir.

The Court: Any of the witnesses for any of the defendants in the courtroom?

Mr. Roberts: No, sir.

The Court: I instruct counsel to bring to the attention of the Court the fact when any witness does come into the courtroom, and when this witness' testimony is concluded I will instruct him and instruct any other witness who may be present.

Mr. Botts: We haven't got into any substantial testimony. If you want to, we could bring them all in right now and go through that.

The Court: Suppose you do that.

Mr. Botts: I have the names here. Suppose I step to the door and call them.

The Court: All right.

Mr. Botts: There are at least two or three witnesses who are not here this afternoon.

(The witnesses then came into the courtroom.)

Mr. Botts: If the Court please, one witness, Mr. Ernest Sussman, got up out of a sick bed. I let him go. He is not here.

Parker A. Priest and Raford Priest have stepped downstairs, knowing that they would not be called for sometime. Dr. J. G. Conger was excused, to come on telephone call and he is not here. So I will ask Mr. Mathews as soon as these wit-
60 nesses return to get in touch with them and tell them not to come into the courtroom.

Th Court: Those that are not in you will see that they are kept out of the courtroom?

Mr. Botts: I will exercise the highest degree of caution to do that, and I think they will not.

The Court: Your associate, you will get him to—

Mr. Botts: I will get Mr. Mathews to go out there. Mr. Sussman, I know, will not be here until after a telephone call. Dr. Conger will not come except on a telephone notice. Mr. Price, from the Police Department, I excused him on telephone notice. I am sure that counsel the other way know their testimony, and if they should inadvertently come in I am sure they will not take serious objection, espcially Mr. Price and Dr. Conger. The others, I will exercise the highest degree of caution possible to keep them from coming in.

The Court: All witnesses, and this applies to Mr. Purnell also, from this time on you are instructed not to come into the courtroom during the trial of the case, and from this time on don't discuss anything you know about the case with anyone and suffer no one to talk with you about the case. Now, there is an exception; you are entitled to talk to the attorneys in the case or Mr. Bombaci; you may talk with him, as he has
61 no counsel. Those are the only exceptions.

Mr. Botts: May I suggest that you advise them, those that are summoned as my witnesses, that they may, if they choose, talk with counsel the other way, but they are under no obligation to do so?

The Court: Oh, yes. If you are a witness for the Government you may, if you choose, talk to counsel for any of the defendants or Mr. Bombaci. That is your privilege. Also, if there are any witnesses for the defendants, you are privileged to talk with the District Attorney, if you wish to, but you are not under any obligation to talk with him. I believe that covers it.

Mr. Botts: I think so.

The Court: Do any of these witnesses know the two that stepped downstairs?

Mr. Botts: Mr. Priest has two sons. Mr. Priest, when your two sons—They were under the rule before—if you will tell them to stay out of the courtroom, and, with your Honor's permission—

The Court: To stay here, and when we get through with Mr. Purnell have them come into the courtroom at that time. You will attend to that, then.

Mr. Botts: All right. Mr. Sussman will not be here, I am sure, probably until tomorrow morning, because I am
62 trying not to call him, because he got up out of a sick bed to come.

The Court: You will find it pleasant, I think, out there in the patio. Observe the instructions given you.

Mr. Botts: They were all under the rule once before and understand it.

(The witnesses then retired from the courtroom.)

Q. (By Mr. Botts) Mr. Purnell, we had reached the point of March 28th, 1947. Were you on that day on duty at the Northwest 17th Avenue and 38th Street place of business of the Lindsley Lumber Company?

A. Yes, sir.

Q. Did anything unusual happen on that day? Just answer "yes" or "no."

A. Yes, sir.

Q. Will you describe what that unusual happening was?

A. Well, around four o'clock in the afternoon I was talking on the telephone and Mr. Sullivan, my immediate superior, he called me from the telephone—he and Mr. Yuhas were standing in the front of the store. He told me that Mr. Yuhas wanted me to go with him across the street. Well, I naturally assumed we were going over to the office, but instead of going to
63 the office he headed to the north of the office building, to a paint shed where they painted signs, advertising signs for the company.

Q. Let's try and place the character and location of that building. That that you have described as a paint shed, on which side of 17th Avenue is it?

A. It is on the west side.

Q. On which side is the main office building?

A. It is on the west side of the street also.

Q. What direction and approximately how far is that paint shed from the main office building?

A. It is about thirty feet north of it.

Q. In relation to the street front, is it immediately up against the street front, or is it set back from the street front?

A. It is set back about thirty or forty feet.

Q. To get the distance, in relation to the point from where you are to the back of the courtroom, would it be that far or nearer?

A. It would be about midway of the seats.

Q. About midway of the seats down there?
A. From where I am sitting.
Q. You see the two ladies back there, one with a blue dress on?
A. Yes, sir.
Q. The seat behind them would be the middle seat?
64 A. That would be approximately the location, yes, sir.
Q. What is the character of that building? What material is it made of? I will put it that way, that little paint shed.
A. As near as I can remember, it was stucco. It was a stucco building, I believe it was, a frame stucco.
Q. Well, it was a wooden building?
A. That is right.
Q. It was a wooden building, regardless of what was on the outside. Now, then, was it square or rectangular?
A. It was oblong. It was, I would say, about twelve feet wide, and about twenty-five or thirty feet long.
Q. One-story or two-story?
A. One-story.
Q. Immediately to the north of that building, do you recall whether there was a line of shrubbery of any kind along there?
A. Yes, sir. There was a hedge about six or seven feet tall.
Q. Do you remember what kind of shrubs that was?
A. No, I don't. I don't know the name of it.
Q. Where is the entrance door to that structure?
A. On the east end of the building.
Q. Centered north and south, approximately?
65 A. Approximately.
Q. The inside of that building, was it just one open room, or was it divided into rooms?
A. Well, whether it was the side of a shelf or not, there seemed to be a small offset about three-quarters of the way back, fitted into the sides of shelves.
Q. Did you go immediately from where you were accosted by this gentleman, whose name I have forgotten, over with Mr. Yuhas to the paint shed?
A. Yes, sir.
Q. Were you on the east side of 17th Avenue when you were contacted by Mr. Yuhas in this manner?
A. Yes, sir.
Q. You walked across the street then?
A. Yes, sir.
Q. Did Mr. Yuhas enter the building with you?
A. Yes, sir.

Q. When you entered that building were there any other persons in that room besides yourself and Mr. Yuhas?

A. Yes, sir.

Q. Will you name as many as you can remember, and identify them, if you see them?

A. There were five men there, Mr. Perry, Mr. Ford, Mr. Williams, Mr. Bombaci and Mr. Giroux.

66 Q. Mr. Giroux is the witness who has just been inside?

A. Yes, sir.

Q. Was the witness Giroux that was in the courtroom, was that the Giroux to whom you referred?

A. Yes, sir.

Q. Will you state whether or not there were any articles of furniture in that room at that time, if you remember?

A. Yes, sir, there was.

Q. What were they, as near as you can recall?

A. Well, there were at least two chairs and a table.

Q. Were there any electric lights in the room?

A. Yes, sir. There was one.

Q. Now, then, will you state what was said and done after you entered that room? Before I get to that, did Mr. Yuhas say anything to you as you walked across the street?

A. No, sir.

Q. Was anything said to you at all after you were notified Mr. Yuhas wanted you until you entered the building with Mr. Yuhas?

A. No, sir.

67 Q. Will you state what transpired in that building from the time you entered it until you left it? Try and tell a complete story, as near as you can.

Mr. Marsh: I wish to interpose an objection on behalf of Charles R. Ford on the ground—If the Court wishes me to state the ground now I will, but if the Court wishes to discharge the jury first, I will wait until the jury is discharged.

The Court: I suppose it is all right to go right on.

Mr. Botts: I don't know what the objection could possibly be.

Mr. Marsh: I object to the witness answering that question on the ground that anything that has happened in that shed is res judicata; it has been determined, and insofar as the defendant Charles R. Ford is concerned it should not be brought to the attention of any other jury, since it is res judicata. The objection is based upon the instructions given to the jury at the preceding trial, in which the Court said—

Mr. Botts: If the Court please, if we are going into an argument, and I think we are, I ask the jury to leave.

The Court: All right. Let the jury retire.

(The jury then retired from the courtroom.)

Mr. Marsh: In the previous trial, if the Court please, the Court instructed the jury under the aiding and abetting
68 statute, and said if a person is present and aids, abets, encourages or in any way assists them he is guilty of a crime. The Court also said: "I think it would help you to know the exact language of the statute, and the exact language of the statute is this: 'Whoever directly commits any act constituting an offense defined in any law of the United States, or aids, abets, counsels, commands, induces, or procures its commission, is a principal.' Mere presence when a crime is committed is, of course, not sufficient to render one guilty as aider or abettor. There must be something to show that the person present and so charged, in some way procured, or incited, or encouraged, the act done by the actual perpetrator. But whether a person does in fact aid or abet another in the commission of a crime is a question for the jury, which may be determined by circumstances as well as by direct evidence. I don't know if I gave you any examples or not. If you and I are walking down the street and we see some person coming along, and you say, 'I am going to hold that person up,' and possibly you yank out a gun and possibly do it. The fact that I am standing there and do not stop you would not make me guilty. But if I do anything—I don't have to grab him, I don't have to hit the person—but if I do anything to encourage it; if I should say, for instance, 'Go ahead. I'll watch'—
69 or—'Well that's a good idea.' If I do anything to aid, abet, encourage or counsel, that would make me guilty as a principal." And further on the Court said in answer to a question: "No, sir, it does not. The mere fact that a man was present is not sufficient to convict him. If a man was merely present when a crime was committed, you should not convict him. If he is present and in any way aided, abetted, encouraged, or gave counsel, then he would be guilty and should be convicted."

I submit to your Honor under those instructions and this testimony, which is the same, or I believe the expected testimony will be the same as that which came forth in the other trial as to what occurred in that paint shack, that under those instructions the jury found that my client Ford did not aid or abet, encourage, assist or in any way have any active part in what transpired there, and, therefore, it could not possibly be evidence of any conspiracy, unless it is something that hap-

pened outside of that paint shop at another time. That question is foreclosed in favor of the defendant and against the Government.

(Argument to the Court by Mr. Marsh)

The Court: All right, Mr. Botts.

Mr. Floyd: Before the Government answers, I would
70 like for the record to show the Defendant Perry joins in the objection just announced by the Defendant Ford.

Mr. Roberts: So do the defendants Dania Supply Company and Andrew Yuhas.

Mr. Dressler: As to the defendant Jay G. Williams, who was convicted, I wish to also state that I join, too; as far as the res judicata would be concerned, I believe this would come under my former motion or plea incorporated in my motion to dismiss as former jeopardy under those conditions. On behalf of Mr. Bombaci, he has asked me to make that the same as to the remaining defendants.

Mr. Botts: I was going to make this suggestion with reference to Mr. Bombaci, since he is not represented by counsel: I am willing throughout this trial that any objection made by any of the learned counsel here, if they should be in any way applicable to Mr. Bombaci, that he shall have the benefit of it without the necessity of him making any formal motion or objection, because he is without counsel, and I am not willing that he shall not have the benefit of anything that may transpire, so that Mr. Bombaci can rest assured that thr ughout this trial if any well taken objection is made and overruled that he shall have the benefit of it.

The Court: That is very good. Let it be so understood.

71 Mr. Botts: If the Court please, if your Honor had participated in this former trial I am perfectly certain that your Honor would overrule this objection without the slightest hesitation.

(Argument to the court by counsel for respective parties)

The Court: We will take a few minutes' recess.

(A short recess was then taken, after which the following proceedings were taken, without the presence of the jury:)

The Court: All motions are denied. I believe I stated in the record that exceptions as to any adverse rulings will be regarded as having been noted throughout the trial; if not, I will so state it now. All right; let the jury come in.

(The jury then returned to the jury box.)

The Court: There was a pending question. I believe I stated "motions" just now; it should be objections." Any and all objections to the question are overruled, and exceptions noted in

accordance with the understanding, which has the Court's approval, that exceptions may be noted.

Mr. Botts: Mr. Reporter, if you will, just read the question.

(The pending question was thereupon read by the
72 reporter, as follows: "Will you state what transpired in that building from the time you entered it until you left it? Try and tell a complete story, as near as you can.")

A. On entering, after we took a couple of steps inside, one of the men—I don't know which one it was—flashed a wallet with a badge or an emblem of some sort on it, and he says, "Here is our identification," so then I was motioned to be seated in a chair about approximately the center of the shack, which had a bright light extended over the chair. So before I sat down they told me to empty my pockets, so I did; I gave them my wallet and handkerchief, and stuff like that. So after I was seated some of the men started questioning me, first my name and my age and where I was born and where I lived, and personal questions of that nature.

Mr. Floyd: May I ask that the witness be instructed to refrain from the use of the word "some," and state specifically who was doing the talking?

The Court: Yes, I think that is right. Tell, if you know, who was doing the talking. Have any of the witnesses come in, Mr. Botts?

Mr. Botts: No, sir, they have not come in.

The Court: Those two sons haven't come in?

73 Mr. Botts: No, sir.

The Court: All right.

The Witness: It was impossible for me to identify—

The Court: Just a moment. Those two sons didn't come in, did they?

Mr. Botts: No, sir.

The Court: All right.

The Witness: It was impossible for me at the time to identify who was asking the questions, due to the bright light shining in my eyes and they were beyond the circle of the light, so I am unable to identify who did the questioning, but there was several of them; there was no one person doing the questioning.

Q. (By Mr. Botts) Go ahead.

A. So after—

Q. Excuse me. In line with that suggestion, while you are testifying if you should know any particular person who did any particular thing, please identify that particular person.

A. All right. So, after questioning along that line, why, out of a clear blue sky Mr. Williams asked me about the stuff that I had been stealing. Well, I denied that I had been stealing

anything, so then he hammered questions at me, calling me a liar, and several of the other men did the same, so after a few minutes of that sort of questioning Mr. Giroux, who
74 was seated at the table, picked up a yellow notebook pad and read from it what was supposed to have been a confession by Mr. Priest, and in this confession he said that he had delivered stolen materials to my house. Well, I tried to explain to him that Mr. Priest didn't even know where I lived, but my objections were hammered aside; I wasn't given a chance to explain anything. If I would start to answer a question somebody else would interrupt me. So after a few minutes of that, all of a sudden Mr. Williams, he struck me with the back of his hand from the side, knocking me backwards out of the—

Q. Where did he strike you, what part of your person?
A. Alongside of the head.
Q. Were you seated as you are now?
A. I was seated in a metal chair.
Q. Where was Mr. Williams in relation to you at the time when he struck you? Will you please place me in the approximate position where Mr. Williams was?
A. He was right about here (indicating).
Q. To your left?
A. That is right.
Q. And a little to the rear, or just to the left?
A. Slightly to the rear.
75 Q. Slightly to your rear. Are you able to say or were you able to visualize to know which hand or arm Mr. Williams struck you with?
A. Well, his right arm.
Q. His right arm?
A. Yes, sir.
Q. His elbow went out something in that manner (illustrating)?
A. He got me with this part of his arm, between the elbow and the wrist.
Q. Across the lower part of the left side of your jaw?
A. My cheek.
Q. Where you are placing my fingers?
A. Yes, sir; right across my cheek, knocking me backwards out of the chair.
Q. Was that a severe or heavy blow?
A. Well, it was heavy enough to knock me out of the chair.
Q. All right.

A. So, as soon as I hit the floor it seemed like he grabbed me by the shirt and jerked me up with my feet against the wall.

Q. Would you pause there just a minute.

Mr. Botts: Mr. Williams, would you be so kind as to
76 stand.

(Defendant Williams stands up.)

Q. (By Mr. Botts) I want you to observe Mr. Williams at this time, and state whether or not, to the best of your knowledge, he was then heavier or light than he is now?

A. He was fully seventy-five pounds heavier than he is now.

Q. A good deal heavier than now?

A. Yes, sir.

Mr. Botts: Thank you, Mr. Williams.

Q. He grabbed you by the collar and jerked you up off the floor—your shirt, I believe you said?

A. Yes, sir, by the shirt.

Q. When he jerked you up, will you tell what he did with you?

A. Then he backed off from me and danced around like a boxer and said, "Come on and fight me." There was a roomful of men; it would be foolish for a man to even dare to fight. I said, "No, I don't want to fight you." I held my hands stiff to my sides so they wouldn't take any nervousness or anything as a sign of antagonism. He stepped in and punched me in the stomach with his fist.

Q. Do you know which fist?

A. I presume his right fist. It is impossible to tell.
77 Q. All right.

A. As I doubled over from the blow he hit me across the back of the neck, knocking me on my face. How long I lay there I don't know, because things then were hazy. The next thing I remember was being picked up and put in the chair again.

Q. When he lifted you up by the shirt, were you seated in the chair when the blow was struck you in the stomach, or were you standing?

A. I was standing against the wall.

Q. Go ahead.

A. So he re-seated me in the chair, and they started firing questions at me again.

Q. You say "they" again. Are you able to identify any particular person?

A. No, sir, I am not.

Q. Are you able to identify any particular person who did ask questions? For instance, to illustrate, do you know whether Mr. Williams did or any other particular person?

A. Well, at several different times, yes, sir, Mr. Williams asked me questions and Mr. Bombaci.

Q. And Mr. Bombaci?

A. And also Mr. Giroux.

78 Q. And Mr. Giroux?

A. As to Mr. Ford and Mr. Perry, I can't truthfully say whether they asked me any questions or not at that time.

Q. You just don't recall?

A. No, sir.

Q. Proceed.

A. After I was re-seated questions were fired at me again, and Mr. Bombaci had a dowel stick in his hand. It is about thirty-six inches long and about as thick as your little finger, about one-quarter of an inch thick. He would punctuate the questions by flicking me across the shins and the back and the leg with that stick.

Q. It is probable that all the jurors know what a dowel stick is, but perhaps some of them don't. Will you describe a dowel stick again?

A. Well, it is a round stick about thirty-six inches long; it usually comes in standard lengths of thirty-six inches. They are anywhere from, I imagine, one-sixteenth of an inch on up to an inch thick. They are used for joining furniture to make an invisible joint, and the one he had was approximately one-quarter of an inch in diameter. It is impossible for me to say exactly the dimensions of it, but it was at least three

79 foot long. He would punctuate each question by flicking me across the shins, back and the legs. So, this questioning continued for a few minutes, then Mr. Williams seemed to get angry again, so he knocked me out of the chair again.

Q. Describe how that was done.

A. In the same manner as it was before, with his arm. This time he jerked me to my feet again. He started slapping me around the face with his open hand. He knocked me to the floor again, until I was at the point of exhaustion. Then he seated me back in the chair. So, then he says, "Are you ready to confess?" By then I was so dazed and bewildered I would have done anything for them to leave me alone. I said, "Yes." He handed me a pencil and pad. I wrote down as near as I could remember what they had read from the confession that Mr. Priest was supposed to have made. So, after I finished writing that, Mr. Williams took it out of my hand. He looked at it. He seemed to be very angry because it wasn't what he

expected. They seemed to want me not only to confess that I had stolen stuff but they wanted me to involve other employees of the company, so he threatened me several times after he took the confession from me, and then—

Q. Will you please state what he said? Saying that he threatened you, that is rather in the nature of a conclusion.

80 A. He said he had to leave right then, if I hadn't given the information he wanted when he got back it was going to be too bad for me.

Q. All right.

A. So, he and Mr. Perry and Mr. Ford and Mr. Bombaci left, which left only Mr. Giroux and Mr. Yuhas in the shed with me.

Q. All right.

A. So, after they left Mr. Giroux and Mr. Yuhas—Giroux, he started to telling me, "Purnell, don't be scared. Why don't you tell Mr. Williams what he wants to know?" I said, "I don't know anything. I have done all you wanted me to do. Why don't you leave me alone?" He took a friendly attitude. He started questioning me about my work. Every answer I would give he would look to Mr. Yuhas for confirmation of the answer. We left there; it must have been half an hour, at least. Then they came back, Mr. Williams, Mr. Ford, Mr. Perry and Mr. Bombaci. Then they took me—Wait a minute. I am getting ahead of myself. Right after I signed the confession they took me out to an automobile and handcuffed me to the car. I was seated in the back seat handcuffed. Mr. Williams and Mr. Ford took me out to the car. It was then about five minutes to six.

Q. Now, then—

81 A. I have gotten ahead of myself on that story.

Q. About five minutes of six they took you out. From your statement you had been in that shack for close to two hours?

A. Yes, sir.

Q. Would you be in a position to approximate how many times you were struck during that time and what portion of the time they were engaged in physical abuse and what portions were in questioning?

A. It would be impossible for me to say. It seemed to me like it was—it had been a longer time than it was; it seemed like hours.

Q. On the question of striking, now, you have said that they struck you on two different occasions. Were there more than those two particular occasions that you were struck?

A. Those are the two high points that stick to my mind. I may have been hit at times I didn't realize, due to the dazed condition I was in, but those I know. I have told it just as I remember it.

Q. Approximately how long after you entered the shack before the blows you have described put you in this that you describe as a dazed condition?

A. Oh, I would say half an hour or forty-five minutes.

Q. Then, for the balance of the time you were in a
82 somewhat dazed condition; is that right?

A. That is right.

Q. You say it was about five minutes until six when you were escorted out of the shack?

A. Yes, sir.

Q. From the time you entered the shack at approximately four o'clock until five minutes of six had you and all of the five people that you have identified been in there continuously?

A. As far as I am conscious or for sure, yes, sir.

Q. You said something about some of them went out for a while, then you said you got ahead of your story. I want you to make it clear whether or not this time when people went out was—

A. It was after five minutes to six.

Q. It was after five minutes of six?

A. Yes, sir.

Q. About five minutes of six you say Mr. Williams and Mr. Ford took you outside?

A. Yes, sir.

Q. What was done with you?

A. Well, I was handcuffed before I left the shack. They placed me in the back seat of a Ford automobile that was parked about three feet from the shed. Then they left me.

83 Q. They left you there?

A. Yes, sir.

Q. Did they fix you in any way so you could not leave the automobile?

A. Well, I had the use of my legs, but I was handcuffed with my hands in front of me, like this (illustrating).

Q. Did you see anything transpire when you left the shack and were put in that automobile?

A. Well, they went back in the shed and then, evidently, while I was being taken to the car they had led somebody else in the shack, but I hadn't seen who they led in. While I was seated there I heard shouting and scuffling around inside, noises about what they were making when they were beating me. So, in about fifteen or twenty minutes I saw

some fellow that worked at the Lindsley Lumber Company—I don't know his name, because he is one of the newer employees. He came out and went on down the street by himself. So, at about—It must have been about a quarter after seven or seven o'clock Mr. Williams came back to the car and stuck his head in the door and said, "What, are you still here?" He told me to get out and come back in the shack. Then is when he started threatening me, he had to leave, if I didn't give him more information it was going to be too bad for me when
84 he came back. So, then Mr. Williams, Mr. Ford, Mr. Perry and Mr. Bombaci left. That just left Mr. Yuhas and Mr. Giroux in the shack with me.

Q. You have already recounted what you say took place when these men left?

A. Yes, sir.

Q. Have you anything to add to what you have already said after having fixed the time as you have?

A. No, sir. Then they treated me pretty well. They talked to me in a kindly tone of voice. They told me they thought they could fix it where I could get my job back with the company and go back to work.

Mr. Marsh: I don't know whether I understand it. Is this testimony about what took place after Ford left?

Mr. Botts: That is right.

Mr. Marsh: I object to anything that took place or was said not in the presence of Ford on the ground that it is hearsay, and no basis for it, as I have pointed out.

Mr. Botts: This is the conspiracy.

The Court: That will have to be determined from the whole evidence. If you have any special instructions you want, Mr. Marsh, at the end of the case, why, you submit them, but I will overrule your objection.

Q. (By Mr. Botts) When you said "They talked to me in a fatherly tone of voi..", to whom were you referring
85 as to "they"?

A. Mr. Giroux and Mr. Yuhas.

Q. They were the only ones that had remained with you?

A. Yes, sir.

Q. What was said with reference to advising you that you had better give Williams what he wanted, or words to that effect?

A. Mr. Giroux said that himself, "Why don't you tell Williams what he wants to know". I tried to tell him I told him everything they seemed to want to know, I didn't know anything, it would be just a bunch of lies.

Q. Were you interrogated with any particularity with reference to whether or not you had knowledge of other employees having stolen things? Did they ask you about that?

A. Well, not in particular, no.

Q. Did Messrs. Williams, Ford, Perry and Bombaci return?

A. Yes, sir, they did.

Q. After about what interval of time?

A. Well, it seemed to me like about an hour and a half or an hour and fifteen minutes.

Q. You had remained in there with Yuhas and —

A. Giroux.

86 Q. And Giroux.

A. Handcuffed all the time.

Q. When these other four persons returned what then transpired?

A. Well, on entering the shack, why, Mr. Williams asked if I had given any more information. He was informed that I hadn't, so he told me to get up out of the chair. He took me back outside of the shack and took me to a second automobile from the one I had been in the first time. He took me over to the second automobile and handcuffed me by the left hand to the steering post to the front seat. Then he left me. After I was there a while I noticed in the first automobile Mr. Sturniolo was handcuffed the same way I was, to the steering post. After a while I heard sounds of scuffling around inside and shouting and everything. Evidently, they had someone in there they were questioning.

Mr. Marsh: I object to what he thinks.

The Court: That "evidently" is stricken from your consideration.

The Witness: There was sounds of scuffling from inside of the shack.

Q. (By Mr. Botts) At the time when you heard these sounds which you have described, was Mr. Sturniolo chained or handcuffed to the steering wheel as well as yourself?

87 A. Yes, sir.

Q. They were some other parties. Neither you nor Mr. Sturniolo were in the shack at that time?

A. That is right.

Q. Did you happen to observe when anyone else came out of the shack?

A. Well, after I was there a few minutes Mr. Yuhas came out and went to a third automobile, parked on the right of the one I was in, and got something out of the glove compartment. So, I called him over to the automobile I was in. He came over, and I told him—

Mr. Marsh: Again, on behalf of Sergeant Ford, I object to anything said not in his presence.

The Court: I will overrule the objection.

The Witness: So, I told Mr. Yuhas that I had never been late from work, that my wife would be awful worried about it, and asked him if he would please get word to her I was being uetained. He said he would see what he could do. He went back in the shack. In about five minutes Mr. Williams came out with a Pepsi Cola and given it to me. I had taken maybe eight or nine swallows out of it when he came out with Mr. Ford and let me loose from the steering post and took me around to the back of the shack. He said, "We don't want that fellow to see us turn you loose." He took me back to the shack and told me me to rub some Pepsi Cola on the
88 bruised places from the handcuffs. So I did. He said, "We want you to come back and work tomorrow. We want you to spy on the rest of the help. Anything unusual you see you notify me."

Q. (By Mr. Botts) Who said that?

A. Mr. Williams.

Q. Who else was present when he said that?

A. Mr. Ford. I told him, "I am on a commission. If I do that I will lose a lot of sales." He said, "If you don't cooperate you will go to jail; you won't get any income at all." I said, "O.k., I will do it." He said, "You can go on home now." I said "What about my wallet and my personal effects?" He said, "I will get them."

Q. Who is "he"?

A. Mr. Williams. Mr. Williams went inside of the shack and left me with Mr. Ford. We were at the side of the shack near the rear. While he was gone he put his arm around my shoulder, and he said, "You understand a lot of innocent people get involved in these investigations. You take that Robinson we have got inside there, we saw him steal stuff but still he denies it." By that time there was really some noise coming from the shack, when Williams got in there.

89 Q. At the time when Mr. Ford made the statement as to who was inside of the shack, just before that and after that, did you hear the sound of some commotion or disturbance in there?

A. Yes, sir.

Q. All right.

A. It really picked up in intensity. So, after about five or ten minutes Mr. Williams came out. He didn't have my wallet or anything, so Mr. Ford had to remind him why he had gone in there. He said, "That is all right." He went back in and he

came right back out with my wallet and stuff. They told me to go on home from the south. There is two entrances to the lot, one on the east and south. I went across an empty lot on the east and headed home. When I got about two blocks from the place I noticed a clock at a filling station; it was approximately ten o'clock, or a few minutes after. So, I went home. I was very excited. I got home, and my wife, she was all up in the air, worried about me, and had some neighbors there. I told her I was all right to get rid of them, so she did. I went in and washed up. My shirt was torn off. I was filthy. She was trying to pump me for information. I told her to wait. I got cleaned up and got in the car. On the way down town I told her where we were going—

90 Mr. Marsh: I object to this as being hearsay, the conversation between him and his wife.

The Court: Yes.

Mr. Botts: Please don't state conversation between you and your wife.

The Court: That is correct. Anything said between him and his wife, Gentlemen, disregard.

The Witness: I went directly from my home to the FBI office in the Biscayne Building. I went upstairs, and there was a young man on night duty.

Q. (By Mr. Botts) The same thing would apply, don't state what that conversation was. I will ask you this question: Did you report the matters that you have here testified to?

A. Yes, sir.

Q. Now, about what time was it you got down to the FBI office?

A. It was around eleven or eleven-thirty.

Q. Who were the neighbors that were in there when you went in, do you remember?

A. No, sir, I don't.

Q. Your mother is here as a witness. Was she there that night?

A. Not when I went home, no, sir. I went by the house after I was at the FBI and picked her up.

91 Q. Your wife was at home when you got there?

A. Yes, sir.

Q. Now, Mr. Purnell, I will ask you if there were any physical marks, bruises or abrasions visible on your person when you got home as a result of the ordeal you had been subjected to?

A. Well, when I disrobed for the night there was some bruises on my back from where I was hit with the dowel stick.

Q. You can't tell what it was. There were bruises?

A. I don't know. I couldn't see them myself. My wife saw them.

Mr. Botts: If the Court please, I want to state here that without my knowledge it was going to be done the Clerk transmitted the exhibits up to Lynchburg. They are being air-mailed today and they will be here just as quick as airmail can get here; therefore, I will have to ask the indulgence of the Court to recall this witness when those exhibits get here to identify the photographs which he had taken. I want to explain why I am not producing them. If I had known the Clerk was going to send them up there I would have done something about it before this.

Q. Now, Mr. Purnell, did you exhibit your person to anyone for observation as to whether or not there were visible
92 marks on your person?

A. Not that evening, no, sir; the next day.

Q. The next day to whom?

A. To Dr. Putman and to a photographer on the Beach, who took photographs of me.

Q. I am referring particularly to your wife and mother?

A. Oh, yes. They saw them that night.

Q. That was what I was getting at.

A. They were the ones that discovered them. I didn't think there would be any bruises from the way they beat me.

Q. Where were you when your wife and mother examined the back portion of your person?

A. I was in my bedroom.

Q. I will ask you whether you were able to feel any sore spots or places on your person at that time?

A. Not at that time, no, sir.

Q. Did sore spots or bruises develop at a later time?

A. Yes, sir. In a couple of days I was really sore.

Q. Where was the particular seat of that pain or soreness?

A. The most severe pain was in my left arm.

93 Q. Were there any sore spots on your back in the vicinity of those bruises?

A. No, sir, none in particular.

Q. What was the condition of your left arm, to which you have referred?

A. There were severe pains, and the doctor observed a very inflamed bruise on my shoulder. What caused it I don't know.

Q. Did you look in the mirror and see that bruise on your shoulder?

A. Well, in about two days it showed up good.

Q. That is what I am saying. Did you at a later time observe through the use of a mirror that bruise?

A. Yes, sir.

Q. Will you place the forefinger of my right hand approximately on that bruised spot on your left shoulder, to which you have referred, in the front part?

A. It was approximately up in here (indicating).

Q. What was the nature of that bruised spot? Did it have any particular conformation or shape?

A. Well, there was a lump there, yes, sir.

Q. It was a lump on your shoulder?

A. Yes, sir.

Q. I will ask you would any symptoms develop if you would press that spot?

94 A. Well, the soreness seemed to move in my whole left arm for a few days.

Q. Did you go back to work there?

A. No, sir.

Q. Did you spy on the rest of the employees?

A. No, sir.

Q. That was your last day of work there?

A. Yes, sir. We went down the next day to get my pay check. My time card was still in the rack.

Mr. Botts: You may cross examine.

Mr. Marsh: I wish to move to strike the testimony of this witness insofar as my client is concerned on the ground that it has been determined by a competent jury that he did not participate in the commission of this act.

The Court: The motion is denied.

CROSS EXAMINATION

Q. (By Mr. Floyd) How long had you been employed by the Dania Supply Company at that time?

A. Approximately in June, of '46, to March 28th, of '47.

Q. What time each day of work did you get off?

A. Six o'clock.

Q. At the time you said Mr. Sullivan told you you were wanted across the street that was during your regular working hours, was it not?

95 A. Yes, sir.

Q. When you entered the shed across the street on the property of the Lindsley Lumber Company, where was Mr. Yuhas, in front of you or behind you, as you entered?

A. He was behind.

Q. You are sure he was behind you?

A. Yes, sir.

Q. And the other men were in the shed at the time you entered?

A. Yes, sir.

Q. You said that a wallet was flashed at the time you entered. Who flashed the wallet?

A. I don't know.

Q. Do you remember testifying in this same trial last time?

A. I do, yes, sir.

Q. Do you know whether it was Mr. Williams who flashed the wallet?

A. No, sir.

Q. Do you know whether it was Mr. Bombaci?

A. No, sir.

Q. Mr. Yuhas?

A. No, sir.

Q. Mr. Perry?

96 A. No, sir.

Q. Was it Mr. Lindsley?

A. Not as I know of, no, sir.

Q. You would know if it was, wouldn't you?

A. Because at the time I didn't place any significance on it.

Q. Was it Mr. Giroux?

A. I don't believe it was, no, sir.

Q. Do you remember last time in answer to the same question as to who flashed the wallet your answer was: "I don't know, but I am sure it was not Mr. Giroux." Do you remember saying that?

A. I remember saying that.

Q. Your answer is still the same; you are definitely certain it was not Mr. Giroux, are you not?

A. I believe, if you will look further, at that time I corrected myself and said I couldn't be positive that it was not Mr. Giroux.

Q. But you did make that statement?

A. I did that make that statement.

Q. It was definitely not Mr. Giroux, but you were not sure who it was?

A. Yes, sir.

Q. What kind of a bulb was this light that you talk about as to being a strong light?

97 A. As near as I can remember, it was a floor lamp or table lamp of some sort with a long neck. It had a bright electric light bulb in it.

Q. It wasn't a suspended light on a string?

A. No, sir.

Q. It was a regular lamp as we would have in a house, like a reading lamp?

A. Along that type.

Q. Did it have a shade on it?

A. It had some sort of a reflector behind the bulb.

Q. What kind of a reflector? Something like this (indicating)?

A. Something along that nature, yes, sir. It was not an open shade, open at the top.

Q. Was it a metal reflector?

A. As near as I can remember, it was something of that nature, yes, sir.

Q. Where was the light placed in relation to the way you were sitting?

A. I was sitting like this (illustrating), and the table where Mr. Giroux was sitting asking questions was over against the wall, and the lamp—that is the reason I can't tell whether it was a floor lamp—was against the table shining over the chair in which I was sitting.

98 Q. Behind Mr. Giroux?

A. It wouldn't be--It would be to the front.

Q. To the side of the table?

A. That is right, to the side of the table.

Q. Which way was the lamp turned?

A. It was turned directly over the chair, to be in the face of anyone sitting in the chair.

Q. Was that the light by which Mr. Giroux was writing?

A. That is right.

Q. How bright a light was it? Can you say whether it was a sixty-watt bulb or a forty-watt bulb or a two hundred-watt bulb?

A. I don't believe I would be qualified to say that.

Q. You don't know?

A. I don't know.

Q. How long were you in that room, in the shed, before you were actually questioned about this stealing that you referred to?

A. Oh, I would say I had been in there about between five and ten minutes.

Q. Mr. Williams and Mr. Bombaci and Mr. Giroux were the only ones who asked you any questions; is that right?

99 A. I don't believe I said that.

Q. Who did ask you questions?

A. The only one I am conscious of asking me questions where I could see them was Mr. Williams himself. The rest of them—the others were asking questions but not where I could see them.

Mr. Floyd: Mr. Reporter, I will ask that you go back into the testimony of Mr. Purnell, to the question, "Who asked you questions," the answer being, "Williams, Bombaci and Giroux." Mr. Botts asked this witness, "Who asked you ques-

tions," and the answer was, "Williams, Bombaci and Giroux."

Q. Do you remember having testified to that on direct examination by Mr. Botts?

A. No, I don't. I remember him asking me. I said I couldn't tell because they were outside of the circle of light.

Mr. Floyd: Mr. Reporter, I think you will find that just after the witness said he was dazed and the next thing he remembered was being picked up and put in the chair again.

(The answer of the witness on direct examination, referred to, was thereupon read by the reporter, as follows:

100 "Question: Are you able to identify any particular person who did ask questions? For instance, to illustrate, do you know whether Mr. Williams did or any other particular person? Answer: Well, at several different times, yes, sir, Mr. Williams asked me question and Mr. Bombaci. Question: And Mr. Bombaci? Answer: And also Mr. Giroux. Question: And Mr. Giroux? Answer: As to Mr. Ford and Mr. Perry, I can't truthfully say whether they asked me any questions or not at that time."

Q. (By Mr. Floyd) Do you remember testifying that Mr. Williams and Mr. Bombaci and Mr. Giroux did ask you questions in that room?

A. Yes, sir.

Q. Which answer is correct?

A. They are both correct.

Mr. Botts: I object to that question.

Q. (By Mr. Floyd) They are both correct?

The Court: Wait one minute. The objection is sustained. That is arguing with the witness.

Q. (By Mr. Floyd) Who had the dowel stick, to which you referred?

A. Mr. Bombaci.

101 Q. You are certain that Mr. Bombaci had the dowel stick?

A. Yes, sir. I will never forget that.

Q. Do you remember on November 12th, 1948, you gave a sworn deposition in the case of Frank J. Purnell, Jr., plaintiff, against Dania Supply Company, a Florida corporation, doing business as Lindsley Lumber Company, being a case in the Circuit Court of the Eleventh Judicial Circuit of Florida, in and for Dade County, No. 21887, at which time the question was propounded to you, "Which one of the men whose names I have read had the stick," to which you answered, "That I couldn't say." Do you remember having made that sworn statement?

A. No, sir.

Q. Do you deny having made it, or just you don't remember having made it?

A. I don't remember it.

Q. I will ask you, do you remember this question and answer: "Question: Immediately following could you see? Answer: I could see." Do you remember having made that statement?

A. I don't recall it.

Q. The next question: "Is it your answer that you cannot tell me because you don't know the names? Is that your answer?" You answered: "Yes. Somebody had it but I
102 don't know who it was." Do you remember that?

A. I seem to recall that now.

Q. But now you are sure it was Mr. Bombaci?

A. Yes, sir.

Q. When you were taken out to the car was it still daylight?

A. The first time?

Q. The first time.

A. Yes, sir.

Q. That was about five minutes of six?

A. Yes, sir.

Q. Where was the car in relation to the shed you were in?

A. It was directly in front of the entrance to the shed.

Q. How far away?

A. I would say three or four feet.

Q. Which way was the car facing?

A. It was facing north, headed up against the hedge.

Q. How far was the automobile in which you said you were handcuffed from 17th Avenue, Northwest 17th Avenue?

A. Approximately thirty feet.

Q. Thirty feet?

A. Yes, sir.

103 Q. Ten yards?

A. That is right.

Q. Northwest 17th Avenue is a very crowded thoroughfare, is it not?

A. Yes, sir.

Q. There is a great deal of traffic going back and forth, both automobile traffic and pedestrian traffic, is there not?

A. That is right.

Q. Who was it that took you outside the first time?

A. That was Mr. Williams and, I believe, Mr. Bombaci.

Q. Mr. Williams and Mr. Bombaci took you out the first time, that is, five minutes of six?

A. Yes, sir.

Mr. Floyd: Mr. Court Reporter, I will ask that you read the question propounded by Mr. Botts and the answer on direct examination as to who took this witness out at or about five minutes of six on March 28th. I think you will find that right after the witness said, "Wait a minute. I am getting ahead of my story."

(The answer of the witness on direct examination, referred to, was thereupon read by the reporter, as follows:

104 "Then they took me—Wait a minute. I am getting ahead of myself. Right after I signed the confession they took me out to an automobile and handcuffed me to the car. I was seated in the back seat handcuffed. Mr. Williams and Mr. Ford took me out to the car. It was then about five minutes to six.")

Q. (By Mr. Floyd) In answer to my question your answer is Williams and Bombaci?

A. That is the answer I gave, yes, sir.

Q. What employee was this that you said was a relatively new employee? Did you know him? Did you see him before?

A. I had seen him before, but I didn't know his name.

Q. Did you talk to him at all?

A. Not that I ever recall, no, sir.

Q. Did you talk to him that evening?

A. No, sir.

Q. Did you have the opportunity to talk to him?

A. I guess I could have. There was nobody around to bar me.

Q. He wasn't in there with the rest of them questioning you, was he?

105 A. Oh, no.

Q. He was removed from any of this so-called beating, wasn't he?

A. Yes, sir.

Q. And you didn't talk to him?

A. No.

Q. At the time you were taken outside the second time who took you out?

A. Williams and Ford.

Q. Mr. Williams and Mr. Ford took you out; is that right?

A. Yes, sir.

Q. You are sure of that?

A. As near as I can recall, that is right.

Q. Referring again to the deposition, the sworn testimony you gave on November 12, 1948, Mr. Purnell, do you recall the question having been propounded to you, "When you went out

about nine-thirty and they locked you to the steering wheel of the car, who did that," to which you answered, "Mr. Williams." Is that correct?

A. I couldn't recall it.

Q. Do you recall the question, "Nobody else," to which you answered, "No," and immediately following, the question, "Alone," to which you answered, "Alone." Do you recall those questions having been asked and answered?

106 A. No, I don't recall that.

Q. Do you recall the question, "Where was Ford when this was done," to which you answered, "He had come in with Williams and the other fellow that had left with Williams." Do you recall having been asked that question and giving that answer?

A. I don't recall that particular answer, no, sir.

Q. At either of the times that you were in the shed, that is, from the period from four to five minutes to six, and from six-thirty, or whatever it was, to nine-thirty, did you at any time ask any of those gentlemen could you leave the room?

A. No, sir.

Q. You didn't ask?

A. No, sir.

Q. Were there customers' cars parked in the lot in which the car that you say you were handcuffed to the steering wheel was?

A. Yes, sir; there was customers' cars there.

Q. There were several customers' cars there? How many?

A. I didn't pay any attention to them.

Q. You are sure there were some there?

A. There always is.

Q. Was it over three or less than three?

107 A. I would say over three.

Q. Do you think there were as many as ten?

A. I wouldn't be able to say.

Q. Somewhere between five and ten?

A. Maybe, yes.

Q. You testified about a row of shrubbery along the north side of the shed. Was there a house immediately north of that shrubbery?

A. Yes, sir, there is.

Q. How far away?

A. I would say about twenty feet.

Q. Twenty feet north of the shrubbery?

A. About fifteen or twenty feet north of the shrubbery.

Q. During all of this time you were being questioned was anyone in your presence, that you remember having seen, in uniform?

A. No, sir.
Q. No one?
A. No one.
Mr. Floyd: That is all.
Mr. Marsh: No questions.
Q. (By Mr. Dressler) How old are you?
A. Thirty-one.

Mr. Bombaci: No inquiry.
108 Mr. Roberts: No questions.
The Court: Mr. Bombaci, I am not going to ask you every time, but I just repeat this time; I will advise you you have a right to ask any questions of any witness you wish to on cross examination.
Mr. Bombaci: I realize that.

REDIRECT EXAMINATION

Q. (By Mr. Botts) Mr. Purnell, you have recounted two instances in which you said that you were taken out of the shack and put in an automobile, one time handcuffed and sitting in the back, the other time handcuffed to the wheel. I will ask you whether or not you were in full control of all your mental faculties at the time when you were led out of the shack on either or both of those occasions?
A. Well, I was in a very high state of excitement.
Q. You have described your condition in some instances as being dazed. I am particularly interested to know whether or not, regardless of your excitement, you mental faculties were clear so that you could recall with certainty the details of what transpired?
Mr. Marsh: I object to that on the ground it is leading, and I move to strike the answer to the previous question on the ground that was leading.
The Court: Read the previous question and answer.

109 (The previous question and answer were thereupon read by the reporter.)

The Court: I will deny the motion to strike that question and answer before this present question. I will deny that motion. Read this last question.

(The pending question was thereupon read by the reporter.)

The Court: I will overrule the objection. You may answer.
The Witness: Well, that would be hard for me to answer, I believe.
The Court: If you can't answer it, why, just don't answer it.
Q. (By Mr. Botts) When did you first become dazed?

Mr. Roberts: We object to the question on the ground that it assumes he was dazed.

Mr. Botts: He has said so.

Mr. Roberts: He said he was highly excited, as I recall it.

Mr. Botts: He said something in his direct examination that he became dazed at some stage.

The Court: Did you say that you became dazed at some stage?

The Witness: As I recall, I used that phrase some
110 place along there.

The Court: Is that your recollection, that you did use that?

The Witness: I believe so.

The Court: I will overrule the objection.

Q. (By Mr. Botts) Now, Mr. Purnell—

The Court: Is there a question outstanding now?

Mr. Botts: No, sir. I am asking it right now.

Q. I want you to give, as nearly as it is possible for you to do at this time, about how long atfer you entered the shack before you became in the condition that you have described as dazed?

A. I would say about fifteen or twenty minutes.

Q. Now, then, I want you to tell whether or not that condition ceased to exist while you were in the shack; if so, how long it existed; if it continued throughout; I want you to describe the length of time that it continued. How long did you continue in that dazed condition after first being so, if you can tell?

A. I don't believe I could tell.

Q. Had you ceased to be in that dazed condition when you got home that night about something after ten o'clock?

A. Well, they told me I did things that I don't remember doing after I went home.

111 Mr. Botts: All right.

The Witness: That is the only way I can answer the question.

Mr. Botts: I think that is all.

RECROSS EXAMINATION

Q. (By Mr. Floyd) Have you talked with Mr. Giroux since the last trial in this court?

A. I have passed the time of day with him.

Q. Have you talked with him?

A. Not pertaining to the case, no. I have talked with him.

Q. On how many occasions?

A. Well, just up here for the trial.

Q. Just today, is that what you mean?

A. Yes. I have been talking to him today.

Q. You haven't seen him since the last trial until today?

A. No, sir.

Mr. Floyd: All right.

Q. (By Mr. Dressler) As a matter of fact, if you were dazed you would not know how much time had elapsed from any particular point, would you?

A. I believe you will find I am approximating the time, as near as I can recollect.

Mr. Dressler: That is all.

112 The Court: What was that last question?

(The last question and answer were thereupon read by the reporter.)

The Court: Anything further?

Mr. Marsh: I have no questions.

Mr. Botts: If the Court please, I would like to make this statement now, because Mr. Bombaci is without counsel, that if any of these gentlemen who are attorneys for the various defendants are willing to do so I will be quite willing for them to act as interrogators on behalf of Mr. Bombaci, but without treating that as in any way indicating that there is any community of interest between their respective clients and Mr. Bombaci.

Mr. Dressler: With that, I will interrogate on behalf of Mr. Bombaci.

Q. Where was Mr. Bombaci when you said that someone had a dowel stick in their hand? Was that Mr. Bombaci?

A. Yes, sir.

Q. Where was he sitting or standing?

A. I was sitting like this and he was over here (indicating).

Mr. Botts: Let the record show that he indicated to his right and somewhat to his rear.

113 Q. (By Mr. Dressler) Was Mr. Bombaci sitting down or standing?

A. All the times that I was—that my attention was brought to his presence he was standing.

Q. Was he standing immediately to your right or a little back to the rear?

A. He was a little back, because all the times that I came in contact with him during the questioning and the beating he would stick his face over my right shoulder into my face.

Q. What was he doing with his hands?

A. I noticed that he was always playing with the dowel stick. He had it between his two hands like this, flexing it (illustrating).

Q. Was he responsible for any of the bruises you claim on your back?

A. Well, from the nature of the bruises, they were evidently made by the dowel stick on my back.

Q. On what basis do you assume that the bruises on your back were made by the dowel stick?

A. From the photographs. They are about as thick as your finger and about that long (indicating).

Q. You assume from the photographs, then, that the dowel stick made the bruises; is that right?

A. Yes, sir.

114 Q. When were those photographs shown to you?

A. Well, after they were developed, but I knew somebody was hitting me with the dowel stick. He was the only one that had it in his hand whenever I saw the dowel stick. I was conscious of the stinging from the dowel stick when I was struck with it.

Q. In other words, you assume, however, that the dowel stick struck you by reason of the photographs you saw?

A. Oh, no. I knew the dowel stick was hitting me, but I say I am assuming that the dowel stick made the bruises. I knew I was hit with the dowel stick.

Q. Where did the dowel stick strike you, on what part of your body?

A. I was hit numerous times. I was hit several times across the shin, across the legs and across the arm, just flicking blows.

Q. It was no hard blow, was it?

A. Oh, no. It wouldn't kill a man or break an arm or nothing. It was just annoying, that is all.

Q. Just annoying, but not enough to break your arm?

A. If somebody asked me a question he would flick the stick at me.

Q. Let's get down to a commonsense basis. You

115 don't assume to tell the jury he struck you hard?

A. Oh, no; just flicking.

Q. Just flicking?

A. That is right; annoying.

Q. You say that flick was enough to make a bruise which would show in a photograph?

A. Something made a bruise.

Q. Do you remember testifying in that same case Mr. Floyd asked you about, Purnell versus Dania Supply Company, Circuit Court Case No. 21887-E, when these questions were propounded to you and these answers were given: "Question: Do you know Bombaci? Answer: No. Question: Did you know him before that time? Answer: No. Question: Have you

ever since become acquainted with him? Answer: No. Question: Which one of the men whose names I read had the stick? Answer: That I couldn't say." Do you remember making that statement?

A. Yes.

Q. Do you remember this question: "Could you see? Answer: I could see. Question: Is that your answer, that you cannot tell me because you don't know the names? Is that your answer? Answer: Yes. Question: Somebody had it, but you don't know who it was? Answer: Yes." Do you remember that statement being made by you?

116 A. From Mr. Floyd's questioning, I am familiar with the question.

Q. Did you make that statement?

A. Well, I don't recall just the exact wording.

Q. You don't remember whether you made that statement or not; is that right?

A. That is correct.

Q. (Reading) "You say you know Williams? Answer: Yes. Question: Did he have it? Answer: No. Question: You say you know Ford. Did he have it? Answer: No, sir." That is your answer?

A. Yes, sir.

Q. Now, you say that you know that Bombaci had the stick?

A. I was introduced to all the defendants at the first trial by name. Up to that time I didn't know them by name.

Q. That is the reason you said you didn't know who had the stick?

A. Yes, sir. I knew the man, but I didn't know his name.

Q. That is your statement now?

A. That is my statement now, yes, sir.

Mr. Dressler: That is all.

REDIRECT EXAMINATION

Q. (By Mr. Botts) You were questioned about
117 some case by yourself against the Dania Supply Company, in which the interrogation was supposed to have occurred?

A. Yes, sir.

Q. My understanding is that you were unable to name at that time the individual who had the dowel stick?

A. That is right.

Q. Are you clear in your mind as to the identity of the individual at this time?

A. Yes, sir.

Q. When did you say you first learned the identity or name of that individual?

A. At the first trial.

Q. You were questioned about some suit against the Dania Supply Company. Did that suit have any relation to the circumstances concerning which you have today testified?

A. Yes, sir.

Q. Is that suit pending or has it been disposed of?

Mr. Marsh: I object to that question on the ground that it is highly improper and irregular and should not have been asked by the District Attorney.

The Court: I sustain the objection.

Mr. Botts: If the Court please, they brought in the question of this lawsuit.

The Court: We are not going to go into the disposi-
118 tion of that lawsuit.

Mr. Botts: If the Court please, it will be necessary for me to recall Mr. Purnell tomorrow or whenever those exhibits arrive.

The Court: All right.

Mr. Botts: You are excused, Mr. Purnell.

The Court: You remember the instructions given apply to you.

The Witness: All right.

(Witness withdrawn)

The Court: Are those witnesses out there now? Do you want to instruct them?

Mr. Botts: Mr. Mathews, will you go out—

The Court: I think they ought to receive the instructions from the Court. Let them come in. All witnesses present who were not here previously will receive instructions in the courtroom now.

Mr. Botts: Tell Mrs. Purnell to come in.

The Court: Let those other witnesses come on in, too.

(Witnesses come in the courtroom.)

The Court: Now Mr. Botts, you have the names of these two witnesses?

Mr. Botts: They are both named Priest.

The Court: What are their names?

119 Mr. Botts: Parker A. Priest and Raford L. Priest.

(The above-named witnesses were thereupon placed under the rule.)

MRS. MABEL ELLEN PURNELL

was thereupon called as a witness on behalf of the Government, and having been first duly sworn, testified as follows:

DIRECT EXAMINATION

Q. (By Mr. Botts) State your name.

A. Mrs. Mabel Ellen Purnell.

Q. Are you the wife of Frank J. Purnell, Jr., who just left the stand?

A. Yes, sir.

Q. Mrs. Purnell, do you recall the occasion on the 28th day of March, of 1947, when your husband returned home and recounted to you certain unusual happenings?

A. Yes, I do.

Q. As you are not learned in the law, I want to tell you don't state conversations between yourself and your husband. That is what is called hearsay, and you shouldn't do it. If I should ask you a question that might seem to elicit such an answer it is not so intended, and please guard against that. About what time, as near as you can recall, did your husband return from his employment that night?

120 A. Between ten-thirty and eleven o'clock.

Q. Did you observe the condition of his clothing at that time?

A. Yes, I did. I had waited supper on him a great, long time, and when he came in, why—we always kid each other a great deal. So, when he came in he wouldn't talk to me at all; he pushed me aside and went into the bathroom. His shirt was torn off of him. All he had on was the collar and cuffs. His back was bruised, three places on his back. Of course, I didn't know that until we put him to bed later. I asked him if I could—

The Court: Wait. You are going into conversations now. You just answer his questions.

Q. (By Mr. Botts) You see, when you say, "I asked him so and so," and he replied, that goes into what I tried to get you not to tell. I understand you are not intending to do what is out of line.

The Court: Just be careful and answer the questions and we will get along.

Q. (By Mr. Botts) Now, Mrs. Purnell, after you observed his shirt being torn, did he put on another shirt or change his clothing in any way?

A. Yes, he did.

Q. Did you accompany him to any particular place?

A. We went to the FBI.

121 Q. How long did he remain there, to your best recollection?

A. I really don't know. I was quite upset about it. I don't recall.

Q. That is to be understood. Did he remain there a substantial period of time?

A. No, sir; not very long.

Q. From the office of the FBI to what place did you go?

A. We went to the Police Station.

Q. From there where did you go?

A. Then we went to his mother's house, to his mother's home.

Q. That is Mrs. Frank J. Purnell, Sr.?

A. That is right.

Q. Did Mrs. Purnell, Sr., accompany you back to the residence of yourself and your husband?

A. Yes; she did.

Q. After you returned did Mr. Purnell disrobe, at least to the extent where the upper portion of his body was visible?

A. Yes, sir; he did.

Q. I will ask you if you noted or noticed any marks or anything of that kind on his person at that time?

A. I saw one mass of faint places on his back.

122 Q. What did you observe, what kind of places?

A. Well, they were long marks; it seemed as though he had been whipped with something; it looked like a whip.

Q. Did those marks go across his body from right to left or left to right, or did they go up and down?

A. They went from right to left, across.

Q. They would go either way, but they were transverse across his body and not vertical, up and down?

A. No, sir.

Q. Were there more than one of those marks visible?

A. There was really two you could plainly see, and one you couldn't clearly see.

Q. Was your mother present—I mean, was Mr. Purnell's mother, I should say your mother-in-law, present when those marks were observed?

A. Yes, she was; she observed them.

Q. Warning you again not to say what she said, was the existence and appearance of those marks the subject of a mention between you, each calling the attention of the other to the marks? Do you understand what I mean?

A. No.

Mr. Roberts: Now Mr. Botts, I think, is bringing out hearsay; that is, as I understood the question. You wanted to know whether the marks was the subject of conversa-

123 tion between them?

Mr. Botts: That is right.

Mr. Roberts: That is strictly asking for hearsay and leading, in addition thereto.

Mr. Botts: If the Court please, I disagree with counsel. Without asking what was said, asking if the existence of those marks was the subject of discussion is—I respectfully suggest I am not asking what that discussion was; I am eliminating that, but the question as to whether or not two persons discuss a matter in their presence would be pertinent as to whether or not they would likely recollect it later; if a matter was discussed they would more likely recollect it later. My purpose is not to disclose what was said, but whether or not attention was directed to the existence of those marks.

The Court: I sustain the objection.

The Witness: I called to her—

The Court: Wait a minute. I say, I sustain the objection.

The Witness: I am sorry.

Q. (By Mr. Botts) Did you observe the person of your husband at a later time, or from time to time on later occasions?

The Court: I can't see that this line of testimony is pertinent to the conspiracy.

124 Mr. Botts: I respectfully suggest that would be corroborative of the testimony of the witness that he was beaten; in other words, if those wounds continued to be observable on his body for a period of hours, days or weeks, that is a matter or corroboration of what the witness has testified to, and that is all that I am trying to elicit, is whether or not these what might be called bruises persisted for some time, or whether or not they immediately disappeared, showing the character of those bruises, and that will be corroborative of the witness' testimony as to the severity of them, as he has indicated, and that is the sole purpose of that, to ascertain whether or not they persisted as observable marks for any appreciable period of time, merely as corroboration of the witness Purnell.

The Court: All right, proceed.

Q. (By Mr. Botts) How long did those marks stay on his body so you could see them?

A. Well, they were on there for—I don't know; two or three days. He went to the doctor.

Q. I will ask you whether or not you recall observing any bruises on his left shoulder?

A. Yes. There was a bruise on his left shoulder.

Q. Did Mr. Purnell make any observations in your presence as to whether or not he was suffering pain?

125 A. Yes.

Mr. Marsh: I object to that on the ground it calls for hearsay.

Mr. Botts: That does not.

Mr. Marsh: That is like saying, "Did he say it hurt". That is the same thing exactly.

Mr. Botts: Yes, sir. That is admissible. I will bring in a hundred cases to show it. I know what I am talking about. That is one of the exceptions to the hearsay rule. If a person mentions pain or anything of that kind, that is one of the recognized exceptions; if he says, "It is painful", if it is an involuntary remark made as a result of the pain; whether or not he would say, "That hurts", or whether when they hit him he said, "Ouch", it makes no difference. That is admissible and I will bring the authorities.

Mr. Dressler: May I add it is not part of the res gestae. That objection should take care of it.

Mr. Roberts: Another objection to it is, the best evidence is Mr. Purnell himself; he could testify.

The Court: Read the question.

(The last question was thereupon read by the reporter.)

The Court: I sustain the objection.

Mr. Botts: That is all.

126 Mr. Marsh: I move to strike the testimony of this witness on the ground that it could only be corroborative of something, an act, which a competent jury has found my client had no participation in.

Mr. Floyd: The defendant Perry joins in that motion.

The Court: I will deny both motions.

Mr. Roberts: The defendant Dania Supply Company and Mr. Yuhas also join in that motion.

The Court: I will deny the motion.

Mr. Botts: Under my statement Mr. Bombaci has the benefit of any merit, if there be any.

Mr. Roberts: We have no questions of Mrs. Purnell, as far as the Dania Supply Company and Mr. Yuhas are concerned.

The Court: It is considered as a motion on behalf of Mr. Bombaci. The motion is denied.

Mr. Botts: Reserving the right to recall Mrs. Purnell when the photographs get here, I have no further questions at this time.

Mr. Floyd: I have only one question.

CROSS EXAMINATION

Q. (By Mr. Floyd) Mrs. Purnell, are you sure that you saw the bruises on your husband's back that night, the night he got home?

A. I certainly did.

127 Q. How is that?

A. I certainly did.

Q. If your husband had testified that those bruises did not appear until two days later, then he would not have had any; is that right?

Mr. Botts: I object to that.

The Court: I sustain the objection.

The Witness: He would have—

The Court: Wait a minute. I sustained the objection.

Mr. Floyd: That is all.

(Witness withdrawn.)

The Court: We will recess at this time until 9:30 tomorrow morning.

(An adjournment was then taken until 9:30 o'clock a.m., tomorrow, Tuesday, April 19th, 1949.)

COLLOQUY BETWEEN COURT AND COUNSEL

128 Miami, Florida,
Tuesday, April 19, 1949.

The above-entitled cause came regularly on for trial before the Honorable John W. Holland, United States District Judge, and a jury, in open court at Miami, Florida, on Tuesday, April 19th, 1949, at 9:30 o'clock a.m., pursuant to adjournment on yesterday, April 18th, 1949.

APPEARANCES:

Fred Botts, Assistant District Attorney, on behalf of the Government.

A. C. Dressler, Esq., of the firm of Riley & Dressler, on behalf of Defendant Jay G. Williams.

Robert L. Floyd, Esq., and Edward F. Boardman, Esq., on behalf of the Defendant Joseph V. Perry.

Defendant John S. Bombaci appearing in his own behalf.

129 John D. Marsh, Esq., on behalf of Defendant Charles R. Ford.

Ernest E. Roberts, Esq., and Edwin E. Strickland, Esq., on behalf of Defendants Andrew J. Yuhas and Dania Supply Co., d.b.a. Lindsley Lumber Co.

The Court: Mr. Clerk, will you poll the jury.

Mr. Botts: I concede the jury is in the box.

The Court: Rather than go through with all of that let the Clerk poll the jury.

(The Clerk then polled the jury.)

Mr. Botts: If the Court please, on yesterday afternoon I asked the witness a question; an objection was interposed, and your Honor sustained the objection. I stated the basis upon which I conceived the question to be proper. Last night I spent considerable time, and I am prepared to sustain the question on the exact ground which I stated. I have cases from the Supreme Court of the United States and from numerous textbooks, and I further have authorities from the Supreme Court of Alabama—I could cite the Southern—that sustain the exact form of the question that I asked. I am willing to present that in the presence of the jury or let the jury be excused, as may be desired, but I wish to present the authorities.

The Court: I think that ought to be out of the pres-
130 ence of the jury.

Mr. Roberts: Is this about the question as to pain?

Mr. Botts: That is right.

Mr. Roberts: In the interest of time we are going to withdraw our objection, so that we can get along with this trial and let the answer be made.

Mr. Botts: I want to know, do you concede that my question is proper, regardless of your objection?

Mr. Roberts: No, sir.

Mr. Botts: Then, I want to argue it.

Mr. Roberts: In order to get on with this case we withdraw our objection.

Mr. Botts: No, sir. I want to sustain my position. If they concede the question is proper that is all right, but I want to prove it is proper.

The Court: Let the jury retire.

(The jury then retired from the courtroom.)

Mr. Botts: If the Court please, I am prepared now to say that I believe there is no authority that sustains the objection that was interposed. I proposed to read textbook authority, a case from the Supreme Court of the United States and then a case from the Supreme Court of Alabama, it being in the Southern, which were the only books I had available, to sustain the exact form of the question.

(Argument by Mr. Botts, during which the follow-
131 ing occurred:)

Mr. Botts: American Jurisprudence, Volume 20, Paragraph 588, headed "Exclamations of pain and suffering."

(Reading) "There is a general rule that where the physical condition of a person is relevant, the usual and natural expressions and exclamations of such person which are the spontaneous manifestations of pain and naturally flow from his sufferings are competent evidence, regardless of the person to whom they were uttered, and may be proved by any person who heard them. This rule, it will be observed, is distinct from the one which renders admissible, under an exception to the hearsay rule, or as original evidence, statements made by an injured or diseased person to his physician upon an examination by the latter for the purpose of treating the declarant. In many cases, expressions of pain and suffering are admissible as res gestae, provided the statements were made at the time of, or soon after, an accident. However, the rule which renders admissible the natural expressions of pain and suffering as proof of an existing condition is not so limited."

The Court: Not so limited?

Mr. Botts: That is right.

The Court: That res gestae proposition appeals to me, so I will reverse the ruling and let that in.

Mr. Botts: On the question of the form of the question I have authorities, too. The objection, if I recall, was on the ground that it was leading.

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(Argument by Mr. Botts.)

The Court: Do you propose to go back and ask the same question or are you just going to ask a new question?

Mr. Botts: I think, perhaps, the best thing would be to just ask a new question.

Mr. Marsh: I think there is another ground to that objection, and that is that it is wholly irrelevant and immaterial and could only tend to prove something that has already been adjudicated in this court; whether the person was beat or not, so far as the Defendant Ford is concerned, it has been determined that he was not a party to such a beating by the verdict of that jury. It would be irrelevant and immaterial as to him.

The Court: Do you object on that ground?

Mr. Marsh: On the ground that it is irrelevant and immaterial, and also that the question which it would tend to decide has been determined.

The Court: Well, the Court has ruled on the matter of res judicata, and the objection is overruled on that ground. As to it being material in connection with the beating, of course, that is a matter of what took place in the shack and whether

it has any bearing upon the proof of the conspiracy, and you gentlemen are entitled to present any written requests
133 you have on that for consideration by the Court.

Mr. Botts: The exhibits are here now.

The Court: Do the other defendants want to adopt that objection and have the same ruling?

Mr. Roberts: Dania Supply Company and Mr. Yuhas will adopt it.

Mr. Dressler: I wish to vary the objection to the point my client has been convicted and sentenced, that these matters here have put this defendant in former jeopardy, inasmuch as the indictment for conspiracy tracks the substantive counts with the exception of a few words there, changing it to conspiracy.

Mr. Botts: That is the same question your Honor has ruled on half a dozen times.

The Court: All objections are overruled. Mr. Dressler, do you make that on behalf of Mr. Bombaci?

Mr. Dressler: No, sir. My objection would not cover his case, but Mr. Marsh's would. I, therefore, make it upon the objection made by Mr. Marsh on behalf of Mr. Bombaci.

The Court: That is as to the res judicata and as to the relevancy, too?

Mr. Dressler: Yes, sir.

The Court: All right. The objection is overruled.

134 Mr. Botts: I propose now, since the exhibits are here, to call back Mr. Purnell first and complete with him, then call back Mrs. Purnell and pick up the little loose edges that I couldn't cover because of the lack of exhibits.

The Court: All right. Let the jury come in.

(The jury then returned to the jury box.)

FRANK J. PURNELL, Jr.,

thereupon resumed the witness stand and further testified as follows:

DIRECT EXAMINATION

Continued

Q. (By Mr. Botts) Mr. Purnell, I hand you two photographs and ask you if you know what those are? Just answer "yes" or "no".

A. Yes, sir.

Q. Who is the person shown there?

A. Myself.

Q. Do you know when those pictures were taken?

A. They were taken on March 29th, 1947.

Mr. Botts: We will offer these pictures in evidence.

Mr. Floyd: No objection.

Mr. Marsh: I will object to them on the ground they are irrelevant and immaterial. They could only tend to prove something that has already been adjudicated.

The Court: The objection is overruled. Any objection,
135 Mr. Bombaci?

Mr. Botts: Under the agreement, any objection made was to be for his benefit, if it could benefit him.

The Court: You mean any objection that could be made?

Mr. Botts: Any objection made by any counsel that could possibly be to the benefit of Mr. Bombaci, it is understood that he shall have the benefit of it, without it being formally made in his behalf.

(The two photographs were thereupon received in evidence and marked, respectively, "Government's Exhibits Nos. 1 and 2.")

Q. (By Mr. Botts) Mr. Purnell, I notice on your back on this Government's Exhibit No. 2, and to a less extent on your back shown in Government's Exhibit No. 1, some transverse marks across your back. I will ask you whether or not those marks are in the relative location where some of the blows with that dowel stick struck your person?

A. Yes, sir; they are.

Mr. Botts: Gentlemen, I direct your attention to these pictures, and to save time, say about eight inches below the shoulder would be about the point. On one of those marks the prints are not very heavy. Is there any objection to making an arrow pointing to them to help locate the point I am
136 referring to, I mean to save time. I don't care. I am going to point to them later. It is all right whether I do it now or later. I will guarantee I am going to point them out to the jury. You may cross examine.

CROSS EXAMINATION

Q. (By Mr. Floyd) What were you wearing the time you spent in this shed on the upper part of your body?

A. An undershirt and a work shirt.

Q. What kind of work shirt, short sleeved or long sleeved?

A. Long sleeved.

Q. What color?

A. White.

Q. What is it?

A. White.

Q. White?

A. Yes, sir.

Q. Did you testify that this shirt was torn or disarranged after you left the shed?

A. Yes, sir.

Q. How badly?

A. Well, it was of no further use.

Q. Where was it torn?

A. It was ripped down the front and down the back.

137 Q. In both places?

A. Yes, sir.

Q. Were the cuffs intact on the arms?

A. I worked with my sleeves rolled.

Q. With the sleeves rolled up?

A. Yes, sir.

Q. How about the collar?

A. That I don't remember.

Q. What did you do with the shirt?

A. I believe my wife destroyed it; I don't know.

Q. You don't have it now, do you?

A. No, sir.

Mr. Floyd: That is all.

Q. (By Mr. Dressler) You say you didn't keep the shirt?

A. I don't believe we have it; no, sir.

Q. Did you look for it at any time?

A. No, sir.

Q. Well—

A. My lawyer, I think about a week after the incident, he brought up the matter of the shirt, but we couldn't find it. It had been there in the—destroyed.

Q. You went to the FBI that night within a few hours after—

A. Yes, but I changed clothes.

138 Q. You say you threw the shirt away after you got back from the FBI?

A. I don't know when it was thrown away.

Mr. Dressler: That is all.

Mr. Botts: You may come down.

(Witness excused)

MRS. FRANK J. PURNELL, Jr.,

thereupon resumed the witness stand and further testified as follows:

DIRECT EXAMINATION

(Continued)

Q. (By Mr. Botts) I hand you Government's Exhibit No. 2 and I will ask you if you observe some transverse marks across

the back of that picture some eight or ten inches below the shoulders?

A. Yes.

Q. I will ask you if that picture indicates the location of the marks which you have testified you observed on your husband's body the night of the 28th and for some days thereafter?

A. They do.

Q. Were there marks in addition to these which were not detected or exhibited by the photograph; in other words, were there other indications of injury?

A. Yes, there was. There was marks on the wrist
139 and also on the shoulder.

Q. I will ask you whether or not—I want this answered "yes" or "no" only; don't give any explanation until you have answered "yes" or "no"—whether or not on the night of the 28th, after your husband had come home or in the days following until his injuries had healed, at any time you heard your husband make any statements or exclamations indicative of his pain or physical condition? Just answer "yes" or "no".

A. Yes.

Q. What did you hear him say and when did you hear that?

A. Well, he complained, in my own words, all the time he went to the doctor. He couldn't eat for two days after that.

Q. What do you mean by complain, complained of what?

A. He complained of the bruises on his wrist, where his wrists were swollen, also of his stomach and serious headaches.

Mr. Botts: That is all.

Mr. Marsh: I move to strike the testimony as not being within the exception to the hearsay rule, and move to strike it on the ground that it is hearsay. To say he complained is not the type of testimony which Mr. Botts referred to a few minutes ago.

140 Mr. Botts: The law that I read stated that they don't have to give the exact words of the witness.

The Court: What about the headaches, Mr. Botts?

Mr. Botts: That is a statement of his physical condition immediately following that.

The Court: Yours was a motion to strike?

Mr. Marsh: Yes, sir.

The Court: The motion is denied.

Mr. Botts: You may examine the witness.

Mr. Floyd: No questions.
(Witness excused)

MRS. FRANK J. PURNELL, Sr.,

was thereupon called as a witness on behalf of the Government and having been first duly sworn, testified as follows:

DIRECT EXAMINATION

Q. (By Mr. Botts) State your name.
A. Mrs. Frank J. Purnell, Sr.
Q. Are you the mother of Frank J. Purnell, Jr., who has been a witness here?
A. Yes, sir.
Q. On March 28th, 1947, where were you living?
A. 54 Northwest 34th Street.
Q. Where was your son living?
A. On 101st Street.
141 Q. On that night, the night of the 28th, quite late in the evening, perhaps after eleven o'clock and perhaps after midnight, I don't know the exact time, did you son come to your house, accompanied by his wife?
A. Yes, sir.
Q. As a result of that visit did you accompany your son to his then residence?
A. Yes, sir, I did. I spent the rest of the morning with him.
Q. I will ask you whether or not your son removed the clothing, at least from the upper part of his body, while you were there that night?
A. Yes, sir, he did.
Q. After he had so removed his clothing did you examine his body, particularly the back of it and the left shoulder?
A. I did.
Mr. Marsh: I interpose the objection that this testimony would be irrelevant and immaterial to the charge of conspiracy here; it would only tend to prove a matter which has been determined by a competent jury.
Mr. Botts: To save counsel's time, there will be other testimony of the same character. I am willing to stipulate that without repeating the same that objection may be read into the record as if offered whenever this or similar testi-
142 mony is offered and that counsel can dictate into the record at his convenience an objection to placing the question before the Court. I do that in order to save time.
Mr. Marsh: In order to save time, I will stipulate with you, if it is agreeable, that any of this testimony may be subject to that objection which I have raised so far.

Mr. Botts: Yes, sir.

Mr. Floyd: Counsel for defendant Perry joins in that stipulation.

Mr. Botts: That will be applicable to all.

Mr. Dressler: I do believe, notwithstanding this stipulation, the Court should put a limit on this testimony, which is so far removed from the conspiracy. It is not like proving the substantive charge in this case. I think there should be some limit to that sort of testimony, the cumulative part of it. We are getting far afield.

Mr. Marsh: I only intended to stipulate as to the res judicata question.

Mr. Botts: Yes; I understand. As to any other objection you can see, you can make that as occasion arises. I was trying to save time in that respect.

The Court: The objections are overruled. If it goes too far afield, Mr. Dressler, you or any other party may call it to the attention of the Court.

143 Mr. Botts: Does the Court approve the course I have suggested with reference to noting an exception and including it in the record later?

The Court: That stipulation is approved. That goes for each and every of the defendants, including Mr. Bombaci. Those exceptions are noted. Such stipulation will inure to each of the defendants, including Mr. Bombaci.

Mr. Botts: That is my thought.

Q. What did you observe with respect to any bruises, contusions, abrasions or other evidences of physical injury?

A. I saw several whelps on Mr. Purnell's back. There was a raised place on his left shoulder.

Q. I direct your attention to Government's Exhibit No. 2 on which there are visible at least two—I think I can see three, but at least two marks.

Mr. Dressler: I object to that, he thinks he can see three. That is unfair.

Mr. Botts: I will show it to the jury.

Mr. Floyd: If Mr. Botts wants to take the stand, let him testify.

Mr. Botts: Listen, Brother, I will show it to the jury. Don't you ever worry about that.

The Court: Read the question.

(The pending question was thereupon read by the reporter.)

144 The Court: I sustain the objection.

Mr. Botts: I reserve the right to exhibit it to the jury. I will show them.

Mr. Dressler: I object to that statement, he will show them. I think that is highly improper.

The Court: I think so. That is stricken from the record. Gentlemen, you will not consider that remark of the District Attorney.

Q. (By Mr. Botts) Now, these marks there, are those in the location where you observed the marks on Mr. Purnell's body?

A. They are, but they are not as plain as they were when I saw them on his body.

Q. Will you place your right hand upon the portion of his shoulder, the approximate location where you—

A. Just about there (indicating).

Q. Mrs. Purnell, did you see your son at other occasions, the next day or shortly after this occurrence?

A. Yes, sir. I was with him all the next day.

Q. Did you see him on other occasions later?

A. Yes, sir, I did.

Q. I will ask you whether or not these marks continued to be visible on his person for any appreciable period of time after the 28th?

A. Why, yes; they were on there—I couldn't say how how long, but they were on there for several days, maybe a week or more. He complained of numbness of his left arm for several weeks after that; his left arm would go paralyzed on him; it would become numb.

Mr. Botts: You may examine.

Mr. Floyd: No questions.

Mr. Botts: You may come down.

(Witness excused.)

CHESTER ROBINSON

was thereupon called as a witness on behalf of the Government, and having been first duly sworn, testified as follows:

DIRECT EXAMINATION

Q. (By Mr. Botts) State your name.

A. Chester Robinson.

Q. Where do you live, Mr. Robinson?

A. 2140 Northwest 43rd Street.

Q. Miami, Florida?

A. Miami, Florida.

Q. How are you employed?

A. Roof and tile layer.

Q. Do you know the corporation known as the Dania Supply Company, which does business as the Lindsley Lumber Company?

146 A. Yes, sir.

Mr. Roberts: I object to that question on the ground that is not the best evidence as to the identity of the corporate defendant.

The Court: Read the question.

(The last question and answer were thereupon read by the reporter.)

The Court: I overrule the objection.

Q. (By Mr. Botts) Were you ever employed by that organization?

A. Yes, sir.

Q. Under what name was it currently known when you were working for it, which name?

A. Lindsley Lumber Company.

Q. Do you know whether that company had a number of branch places of business in this area and the adjoining county?

A. Yes, sir.

Q. At which location were you employed?

A. The 17th Avenue yard, Northwest 17th Avenue.

Q. That 17th Avenue yard, about what the north and south street number—I mean—

A. 38th Street.

Q. When did you start working for the Lindsley Lumber Company?

A. September, 1945.

147 Q. In what capacity?

A. As a laborer.

Q. How long did you continue to work for that company?

A. Until March 28th, 1947.

Q. Did your status, or the nature of your work, change during that period of time?

A. Yes. I worked a few months as laborer, then I was put on as a truck driver four or five months, then I was a salesman.

Q. In March, of 1947, what was the nature of your employment? Were you then a salesman, in other words?

A. Inside salesman.

Q. On the 28th day or on or about the 28th day of March, of 1947, did anything unusual happen to you at or in connection with your employment?

A. On the evening of March 28th, 1947, about eight o'clock there was a knock on my door.

Q. Had you worked at your ordinary place of business that day?

A. Not that day, no, sir.

Q. You were absent from your employment?

A. Yes, sir.

Q. Where were you living at that time?

A. The same place.

148 Q. The same place you are now?

A. Yes, sir.

Q. You say about eight o'clock that night there was a knock on your door?

A. Yes, sir.

Q. Proceed from there on and recount what transpired.

A. I answered the door, went to the front door. There were three men standing there.

Q. Do you now know who they were?

A. Yes, sir.

Q. Who were they?

A. Williams, Bombaci and Ford.

Q. Do you refer to the persons of that name who are defendants and now in the courtroom?

A. That is right.

Q. Go ahead.

A. The one—Williams asked me if I was Robinson. I said, "Yes, sir." He reached and took me by the arm. He said, "You are going with us," and led me off the porch. I turned and called to my mother and sister and told them I would be back in a little while. They took me out and put me in their car and drove to the home of John Sturniolo, on 58th Street. At his home Williams and Ford got out and went to the home of John Sturniolo. Ford went part way; Williams went up to the door. Sturniolo came to the door and they brought
149 him and put him in the car, then we drove to the Lindsley Lumber Company yard on 38th Street. They drove to the paint shack in the back of the lot.

Q. Just briefly identify that. Which side of 17th Avenue is that shack to which you are now referring?

A. It is on the west side of the street going north.

Q. In relation to the two-story office building, where is it?

A. It is northwest.

Q. Is the front of that building right up against the street line, or otherwise?

A. No. The shack is near the back of the lot.

Q. Your best recollect as to the distance from the street line it is to the front door of that shack?

A. Approximately eighty or a hundred feet.

Q. What is the character of that building that you entered? Wait a minute. You say they took you to the shack. Did you enter the shack?

A. Yes, sir.

Q. What kind of a building is that?

A. Well, it was always known as the paint shack. They kept paint cans there.

Q. What kind of a structure is it?

A. A small square frame building, twenty by twenty, or something like that.

150 Q. The entrance door is on what part of the shack?

A. Facing the street, on the east side.

Q. Do you happen to know whether or not in front of that building there is a hedge of some kind, or shrubbery?

A. There is a hedge along the north side of the building.

Q. About what time of night was it that you entered that building?

A. When we came to the shack it was, I would say, around eight-fifteen.

Q. What was done? Did you go into the shack immediately, or what did you do?

A. They handcuffed Sturniolo to the steering wheel and took me inside of the shack. When we got inside of the shack there was Frank Purnell, another salesman, seated in a high metal chair, and there were other men in there that later were identified as Giroux and Perry and Yuhas.

Q. When you entered the shack what was done, if you know, with Purnell?

A. Williams when he came in told Bombaci to take Purnell out. Bombaci called to Purnell to get up or stand up several times, but he still sat there, slumped over in his chair. So, finally Williams walked over and grabbed him up by the handcuffs and Bombaci put his arm around him, and they walked him out. In about fifteen minutes Williams and Bom-

151 baci came back into the shack.

Q. After Williams and Bombaci returned what transpired with reference to yourself?

A. Williams told me to sit down in this chair that Purnell had been sitting in and face a red light, that was on the south side of the shack, and wall.

Q. Go ahead and tell what transpired.

A. He told me—

Q. Who told you?

A. Williams told me that there was a bunch of racketeer contractors working with Lindsley Lumber Company employees doing some crooked business. He wanted me to tell him who they were. He said he knew who they were and all

about it. He said, "You son-of-a-bitch, we have the goods on you. We have followed you for three weeks, every move you made. You don't eat or sleep, you don't do anything we don't know, every move you made for three weeks. We have the goods on you. What we want to know is the names of these guys, these contractors, you have been doing business with, and other employees." I told him I didn't know what he was talking about, I had never seen any crooked business. I said if I had done some crooked business and, as they said, they had the goods on me, I didn't think the shack was the proper place to take me. When I said that, Bombaci struck me and knocked me to the floor. Then he said, "We have a wise son-of-a-
152 bitch here. Get up and sit in the chair." I got up and sat in the chair. Then they started. Williams asked me, he says, "Where did you get some new doors that are standing in your bedroom? Where did you get the new bathtub that is setting in your house?" I told them I bought them from Lindsley Lumber Company. He said, "Where are your receipts?" I said, "I don't know. I don't have them with me." I said, "You can check on the books. It is only a short ways to the office building. If there is any question you can check on the books. I bought them the 1st day of March and paid cash to a Lindsley Lumber Company salesman. They were delivered to my house with a Lindsley truck with a Lindsley truck driver."

Q. Is that the receipts from the Lindsley Lumber Company?

A. That is the receipts. He struck me. He asked me where I got those doors. I told him where I got them and how I got them. They started describing cars that had driven into the Lindsley Lumber yard and asked me whose cars they were, and described different men and asked me who they were. As far as I know, I had never seen them and didn't see any cars with them in. They asked me a question; I told them I didn't know what they were talking about. They would push me over backwards on the floor from the chair.

Q. Who? You say "they".

153 A. Bombaci and Perry would take turns as Williams questioned me. Williams would ask a question. I would tell him I didn't know; he would pick up a flexible—it looked like a short piece of hose; it felt solid; he flogged me with this as he would ask the question. This went on for an hour or two. Around eleven o'clock that night they all went out to get a drink except Ford. He stayed with me in the shack. When they were gone a few minutes Ford said to me, he said, "Fellow, you better tell these fellows something." I said, "I don't know what to tell them." I said, "I don't know what

you are talking about." I said, "I have took about all I can take. I think they are about through with me, anyway." He said, "They haven't even started on you yet." He kept saying, "Fellow, you better tell them something." "Fellow, you better tell them something."

Q. Did he make any statement as to why he thought they hadn't already started on you?

A. Well, he told me, he says, "I have seen these boys work before." He said, "They haven't even started on you yet." So, when they came back I told Williams that I believed I had held out about as long as I could. I said, "I am ready to talk." So, they got a pencil and paper. I made up a story, made up names and things that I did, and I said—He said, "How did you do the crooked business?" I said, "People would come to
the Lindsley Lumber Company; I would let them take
154 things without paying." "Who worked with you?" I said, "No one worked with me. I did it all by myself." He said—

Q. Just pause there. Was there any truth in those statements you gave to them?

A. No truth in any of it, in the names or in what I said.

Q. Why did you make those statements, then?

A. I beg your pardon?

Q. If those statements were not true, why did you make them?

A. I had taken all the flogging I could take. I was flogged and pushed and kicked; kicked around the floor, hand cuffed and beat across the sides and the back until it hurt me to breathe, and I had taken all I could take.

Q. Go ahead. State what additional you said to them.

A. They asked me who worked with me, who worked with me. I said, "No one worked with me." They asked me over and over again, and I finally named names of different ones working with Lindsley Lumber Company. They took it all down, and Williams would say, "Well, what did you let this man have," one of those names I had named, "What did you let him have?" "Well, he got a thousand feet of siding." He would reach and pick up his hose and flog me. "Mr. Son-of-a-
bitch, I am a little hard of hearing. What was that
155 you said?" I said, "That is ten thousand feet of siding." He said, "That is what I thought you said." Mr. Yuhas would step up. He would say, "How about sash?" I would say, "Ten thousand sash." Williams would flog me again and say, "You forget, Mr. Son-of-a-bitch. I told you I was hard of hearing." I said, "That is thirty thousand sash." Mr. Yuhas would step up and say, "How about nails? How about

flooring? How about this?" I would every time raise the amounts, name new names, name new ones that worked with Lindsley Lumber, the shipping clerk and the truck foreman, salesmen; anyone I could think of I named. They took it all down and I signed it. Then they started to take me from the shack. As we were going out Williams picked up a half-inch dowel stick, backed me up against the wall and screwed it in my chest. He said, "Mr. Son-of-a-bitch, anybody you have named, any names that are phoney, if I find anything wrong with this, either I or one of my men will finish you right." They took me out and handcuffed me to the steering wheel of the car and took Sturniolo in the shack.

Mr. Dressler: He says "they". Your Honor, I would like to have him identify the persons.

The Witness: I really don't remember.

The Court: Can you tell who they were?

The Witness: I forgot who took me out, which ones it was.

156 The Court: What did you say?

The Witness: I forget which ones it was that took me to the car.

Q. (By Mr. Botts) Now, then, you have given the approximate time that these people arrived at your house and when you arrived at the shack. What period of time, to your best recollection, did you spend in that shack?

A. Well, I really don't know. It seemed like hours. I didn't have any watch with me. If I had had they would have had it. They took my glasses off and everything out of my pockets with my wallet as we went in the shack. If I had had a watch they would have took that, too. I don't really know what time it was.

Q. After you had gone and after the incident with reference to the dowel stick that you have mentioned, what was done with you?

A. They took me out and handcuffed me to the steering wheel and brought—took Sturniolo in the shack.

Q. Did you see Sturniolo go into the shack?

A. Yes; I saw him go into the shack.

Q. While Sturniolo was in the shack where were you?

A. Handcuffed to the steering wheel of the car.

Q. Where was that car relative to the shack?

A. It was on the northwest corner of the office

157 building.

Q. That would be approximately what distance from the shack?

A. About twenty feet, I would say.

Q. Will you tell us whether or not there were any windows or openings in the south side of that shack?

A. There is two windows that I noted on the south side of the shack.

Q. While you were outside there and Sturniolo was inside, did you hear anything, any sounds emanating from the location of that shack?

A. I heard muffled shouts, and I could also—they had a shade or something back over the window, the one nearest the street. I could also see shadows of arms in there, and heard the shouting, muffled. I didn't hear anything they said or any words.

Q. How long did that continue with Sturniolo in the shack and you handcuffed to the wheel of the car?

A. I would say an hour or two after they brought me out.

Q. Did you see Sturniolo when he came out of the shack?

A. Yes, sir. They brought him out and put him in the car. They had two cars. Some got in one and some the other, and we drove down to the Police Station.

158 Q. When you came out after your period of stay in the shack was Purnell visible outside?

A. No. I never saw Purnell again.

Q. After he went out of the shack, you mean?

A. Yes.

Q. Who took you down to the Police Station, if you can recall?

A. I don't remember who drove which car.

Q. Do you know what persons were in the party that went with you down to the Police Station? I mean, either in the car with you or the accompanying car, if there was one, as you have indicated?

A. As we pulled up to the station they all were there.

Q. Who do you mean by "all"? Name them.

A. Williams, Bombaci, Ford and Giroux. Perhaps Yuhas wasn't there. I don't remember whether he was at the Police Station or not.

Q. I want you to name the persons, if you can, who were in the shack when you were being beaten, as you have indicated. You have mentioned Williams and Bombaci. I will ask you if there were others present and, if so, to identify them.

A. There was Williams, Bombaci, Ford, Perry and Mr. Yuhas.

159 Q. You have indicated that when you arrived at the Police Station you observed Mr. Yuhas was not present?

A. I don't remember that he was there.

Q. Was there anyone else in the car with you when you went to the Police Station besides those four that you have mentioned?

A. Mr. Giroux.

Q. You mentioned him.

A. I didn't mention him.

Q. You mentioned Williams, Giroux, Bombaci and Perry.

Mr. Floyd: Just a minute. If the Court please, the testimony of the witness speaks for itself. He didn't mention Mr. Perry, and Mr. Botts just put the words right in his mouth.

Mr. Botts: That is not true. He did mention Mr. Perry.

Mr. Floyd: We will ask the Court Reporter to read the testimony of who was at the Police Station when they arrived there.

Mr. Botts: Read it. I could be mistaken as to whether or not he mentioned Mr. Perry, but I don't think so.

The Court: I will grant the request.

(The testimony referred to was thereupon read by the
160 reporter, as follows: "Question: Do you know what persons were in the party that went with you down to the Police Station? I mean, either in the car with you or the accompanying car, if there was one, as you have indicated? Answer: As we pulled up to the station they all were there. Question: Who do you mean by 'all'? Name them. Answer: Williams, Bombaci, Ford and Giroux. Perhaps Yuhas wasn't there. I don't remember whether he was at the Police Station or not.")

Mr. Botts: I was not interested in Mr. Floyd's client.

Q. Do you know what happened to Mr. Sturniolo?

A. Sturniolo was in the same car with me going to the Police Station.

Q. All right. That is what I was interested in. When you got to the Police Station what happened to you and what happened to Sturniolo in your presence?

A. Would you ask that again, please?

Mr. Botts: Read the question.

(The pending question was thereupon read by the Reporter.)

A. They took us in the Police Station and finger-
161 printed us and locked us up.

Q. Is that a picture that was taken of you down there at the Police Station on that occasion (handing picture to witness)?

A. That is a picture of me, but I don't remember it being taken.

Q. That is a picture of you. You don't remember that?
A. No.
Q. What was your physical condition when you arrived at the Police Station, with respect—
A. I could walk by myself. I felt bad. I had my—it hurt me—As I said, it hurt me to breathe. My left side hurt me, the back and the side where Bombaci had kicked me when I was on the floor at one time.
Mr. Dressler: Who kicked him? I didn't get that.
Mr. Botts: He said Bombaci.
Q. What was your condition with reference to your mentality, with reference—
A. I knew what I was doing, I think, but I still don't remember having a picture taken.
The Court: You don't remember what?
The Witness: Having a photograph made.
Mr. Botts: The Government offers in evidence the picture identified by Mr. Robinson as being his picture.
162 Mr. Floyd: No objection.

(The photograph was thereupon received in evidence and marked "Government's Exhibit No. 3.")

Q. (By Mr. Botts) To what location in the Police Station were you taken? Was it the station across on the south side of Flagler Street? Is that the place you referred to as the place where you were taken, or, do you know?
A. I don't think so. I think it was on the north side. I really don't remember where it was.
The Court: Read that last question and answer.

(The last question and answer were thereupon read by the Reporter.)

Q. (By Mr. Botts) What was done with you after you arrived at the Police Station? I mean, down in the area of the Police Station.
A. They took us in to a desk where a man was sitting and gave him this—showed him this confession, and they fingerprinted us and locked us up. That is all I remember.
Q. Do you know where you were locked up?
A. They said it was the 16th floor.
Q. It was in what building? Do you know which building it was?
163 A. The Court House.
Q. It was the County Court House. They told you it was the 16th floor?
A. Yes, sir.

Q. Approximately, to your best recollection what time of day or night was it when you arrived at the Police Station?

A. It was around two o'clock in the morning.

Q. If this occurrence happened on the 28th, as you have indicated, then, what would be the morning?

A. It would be the 29th.

Q. The morning of the 29th. How long after you arrived at the Police Headquarters, or wherever it was you were taken, before you were lodged on the 16th floor and locked up?

A. Perhaps half an hour.

Q. How long did you—Just a minute. I would like to fix the day of the week. I don't know whether the witness can or not.

A. It was Saturday when they booked us, Saturday morning.

Q. It was Saturday morning?

A. Yes.

Mr. Botts: I have a Universal calendar here. I was going to check that up.

164 Q. It was a Saturday morning?

A. Yes, sir; two o'clock in the morning.

Q. What happened to you during that Saturday?

A. Well, my sister—

Q. What is her name?

A. Elsie Hannon and Charles Perry came in to see me.

Q. Are you related to Charles Perry in any way?

A. He is my cousin.

Q. What time of the day did they come in to see you?

A. Sometime Saturday morning, Saturday forenoon.

Q. Where were you when they came in to see you?

A. I was on the 16th floor.

Q. The same location, whether it was the 16th floor or not?

A. Yes, sir.

Q. How long did their visit last?

A. Perhaps twenty minutes.

Q. How long did you remain in that lock-up, wherever it was located, perhaps on the 16th floor?

A. Until Monday afternoon.

Q. Do you know why or how you were released at that time?

A. When my sister came in to see me on Saturday morning I told her what had happened.

Mr. Marsh: We object to the conversation.

Q. (By Mr. Botts) Don't repeat what the conversa-

165 tion was. Don't go into that, please.

The Court: Yes; don't repeat the conversation.

Q. (By Mr. Botts) All right.

A. What was the question again?

Mr. Botts: Read the question.

(The last question was thereupon read by the reporter, as follows: "Do you know why or how you were released at that time?")

A. Through my attorney; through a lawyer.

Q. (By Mr. Botts) Who is that attorney?

A. Fritz Gordon.

Q. In some way he accomplished your release?

A. That is right.

Q. During the time when you were locked up, as you have indicated, from Saturday morning, about two o'clock in the morning, through until Monday—Did you say Monday afternoon?

A. Monday afternoon, about five o'clock.

Q. Were you visited by any of the defendants, or any of these men that had been out there with you? Did they come to see you?

A. Not at the jail, no, sir.

Q. You didn't see them. Were you visited by anyone else except your cousin and your sister?

166 A. No, sir.

Q. When was it your attorney first interviewed you?

Mr. Marsh: I object to that as being irrelevant and immaterial.

Mr. Botts: I am not going into the subject of the interview. I just want to find out when he was visited.

The Witness: Monday afternoon about five o'clock.

The Court: I overrule the objection.

The Witness: Monday afternoon about five o'clock they brought me down to the ground floor when Mr. Gordon was there.

Q. (By Mr. Botts) At any time did you have any photographs made to record the condition of your person?

A. Yes, sir.

Q. I hand you four photographs, two large and two small ones, and ask you who the person is shown in these photographs?

A. They are all of me.

Q. When with reference to the time when you were released from the lock-up did you have these pictures made?

A. Monday evening.

Q. You mean on the same day you were released?

A. On the same day I was released, yes, sir.

Q. Do these pictures accurately illustrate your physical condition on the day when you had them taken?

167 A. They don't look much like they would have looked Friday night or Saturday, but they were—

Mr. Botts: We offer these photographs in evidence.

Mr. Marsh: I object to the introduction of the photographs on the ground there has been no proper predicate laid for their introduction. They have not been properly identified or shown to be correct reproductions of anything.

Mr. Botts: I asked the witness, if the Court please, if these correctly illustrate his physical condition at the time they were made; he said they did.

The Court: Overruled.

Mr. Marsh: I will ask the Reporter to read the answer that the witness gave.

Mr. Botts: I will ask him again, if there is any question about it.

Mr. Marsh: Refer to the record.

The Court: Let him read the record.

(The question and answer referred to were thereupon read by the Reporter, as follows: "Question: Do these pictures accurately illustrate your physical condition on the day when you had them taken? Answer: They don't look much like they would have looked Friday night or Saturday, but they were—")

168 The Court: I sustain the objection.

Q. (By Mr. Botts) I will ask you, Mr. Robinson, if these pictures correctly illustrate your physical condition at the time when they were taken?

Mr. Marsh: I object to that on the ground it is leading.

Mr. Botts: There is nothing leading about the question. It doesn't suggest the answer. It calls for a "yes" or "no" answer; it may be "yes" or it may be "no", I don't know. It doesn't suggest the answer and, therefore, it is not leading.

The Court: I believe it would be better, Mr. Botts, for the witness to say what they represent, so I sustain the objection.

Mr. Botts: If the Court please, I am going to stop and get some authorities on that question, because I know I am right. I will furnish you a thousand cases that sustain that question. I just get a little fed up about these captious objections that have no legal basis. I will undertake to furnish a thousand cases that will support that question.

The Court: If it calls for a "yes" or "no" answer?

Mr. Marsh: I will withdraw that objection.

Mr. Botts: If it calls for a "yes" or "no" answer it is not a leading question.

169 The Court: All right. The objection is withdrawn. You may answer the question.

Q. (By Mr. Botts) Will you answer the question, please, Mr. Witness?

A. It shows the exact places across the arms and the back and the sides that I was struck, but it doesn't tell much of my physical condition, because I was under a doctor's care for weeks, treatments to the back of my head and to the injuries where I was hurt, but it doesn't show my physical condition.

Q. Does that illustrate the wounds and abrasions that appeared on your body?

A. Yes, sir.

Mr. Dressler: I object to them, for this reason: He is asking about a group of photographs collectively. Your Honor can readily look at two of these photographs and realize the import of my objection. They are pictures of his back. How can a man see his back?

Mr. Botts: He can feel.

Mr. Dressler: To say whether or not that is a pictorial representation, not by feeling, but a pictorial representation, I think the objection is well taken.

The Court: What is your objection?

Mr. Dressler: I object to the two pictures of the man's back collectively, on the ground that he could not see his
170 back during that period, so he cannot testify whether or not that is a correct pictorial representation of his back.

Mr. Botts: He may have looked at them in a mirror, so far as I know. He answered the question.

The Court: Do you object to the introduction of the pictures in evidence?

Mr. Dressler: Of the two pictures of the back, yes. He could not see what was on his back.

Mr. Botts: If the Court please, he has told when they were taken. The pictures speak for themselves. If they are pictures of him, then, the pictures speak for themselves.

Mr. Dressler: There are ways of getting the photographs in evidence.

Mr. Botts: This is a proper way. I will furnish you another thousand cases to prove it.

Mr. Dressler: There is a method of doing it; let him identify a house, or something a man can see, and say, "This is a picture of it, yes." This is a picture of the man's back. The Court will take judicial notice that he can't get his head far enough around to see his back. There is a way of doing that, and let us do it properly.

Mr. Botts: It is done properly. I am going to do it that way. I can get you a thousand authorities on that question, too.

I am getting fed up with these captious objections.
171 There is no foundation for them.

Mr. Marsh: I move to strike that remark. It is un-

fair, and makes it appear that the objections which we are making are made only for the purpose of—

The Court: Yes. That remark is stricken, as to being captious. It is stricken from the record, and the jury will not consider it.

Mr. Botts: The pictures are offered in evidence.

The Court: The objection is overruled; they are admitted in evidence.

(The four photographs were thereupon received in evidence and marked, respectively, "Government's Exhibits 4, 5, 6 and 7".)

The Court: It is eight minutes past eleven. I think we will take our mid-morning recess at this time, of ten minutes.

(A short recess was then taken.)

Mr. Botts: Gentlemen, these are the photographs that have been the subject of the last testimony. If you will, examine them (hands photographs to jury.)

Q. Mr. Robinson, you mentioned in your testimony when you were in the shack that while you were down on the floor someone kicked you in the side. I will ask you if you will state whether or not there was any conversation or mention
172 by you of any matter in connection with that particular incident?

A. When I was on the floor at one time Bombaci kicked me in the side, my right side. I asked him if he would not kick me in my right side, because I had been operated on for appendicitis. He asked me if I would pull out my shirt and show him. He leaned over and asked me where, took a look, and kicked me in the same place again and said, "Get up, you Son-of-a-bitch," as he said before several times when I was on the floor.

Mr. Botts: You may examine.

Mr. Dressler: Mr. Bombaci would like to ask a few questions.

CROSS EXAMINATION

Q. (By Mr. Bombaci) In your testimony you claimed that Bombaci took Mr. Purnell out of a chair, put his arm around him, and started to walking around, did you not?

A. Yes, sir.

Q. Will you please explain to this Court exactly how Bombaci went about doing that, just what he did to Mr. Purnell?

A. As Williams pulled him up by the handcuff you put your arm around him and walked to the front door.

Q. You said that Mr. Purnell was in a dazed condition, did you not? You said he was sitting there like that.

173 A. He looked dazed; yes, sir.

Q. In other words, he was unable to walk; Bombaci more or less assisted him in walking; you might say carried him; is that correct?

A. Yes, sir.

Q. You also said in your testimony that Bombaci had knocked you down on the floor, didn't you?

A. Yes, sir.

Q. Will you go through the exact motions that Bombaci went through when he hit you and knocked you to the floor?

A. You struck me a blow like this (illustrating).

Q. I came down with a good, hard blow with my fist, open or closed?

A. I don't remember. I hit the floor; that is all I remember.

Q. Exactly where did I hit you when you were knocked down?

A. Across the head and shoulders.

Q. You fell down?

A. I was on the floor; yes, sir.

Q. That was a good, hard punch, you might say?

A. Yes, sir.

Q. I knocked you down?

174 A. You did.

Q. Did Bombaci leave you there, or what happened after that? You were on the floor at that time?

A. At that time Williams was questioning me.

Q. That is the only time he hit you, after I hit you or before?

A. He was questioning me all the time, before and afterwards, and while I was on the floor.

Q. I would like to have you answer my question. After I had struck you this blow and you were knocked to the floor, what happened next? Did you just simply lay there, or what happened?

A. No. You said, "You son-of-a-bitch, get up."

Q. Did you get up?

A. Not at that time. Williams was standing on my left foot.

Q. He was standing on your left foot?

A. As you kicked me in the side I asked you not to kick me in the right side.

Q. Could you give me an idea when you lay on the floor—you say Williams was stepping on your left foot. You would be laying on the floor. I imagine it would be something like that (indicating), wouldn't it?

A. Possibly. Something like this (indicating).

Q. You were lying down. He stepped on your foot?

175 A. Yes, sir.

Q. Then what happened?

A. You kicked me.

Q. Where did I kick you?
A. In the right side.
Q. In the right side?
A. Yes, sir.
Q. Will you explain to me now exactly how I went about kicking you in the right side? I mean, just get up and show me exactly what happened.
A. You kicked me in the side like that (indicating).
Q. You said a few minutes ago that I had bent down, or, you explained to me you had an operation and I wanted to see it, did you not?
A. Yes, sir.
Q. Will you explain to me just what I did?
A. I told you to not kick me in the right side.
Q. Explain to me how I went about looking at your operation. You wanted me to see it, did you not?
A. Yes, sir.
Q. Explain that.
A. I don't know whether you saw it or not, but I pulled my shirt out to let you look, and you kicked me like that (indicating).

Q. You stated I bent away down there and looked at
176 it, I straightened up and kicked you in the operation?
A. In the right side.

Q. You said your operation. How long did you have that operation?
A. It had been a couple or three years, I suppose.
Q. I mean, did the operation burst open? Did it have any puncture, or anything like that?
A. No, sir.
Q. (By Mr. Roberts) You have testified about calling off some amounts of lumber and nails and windows and like that, that you said you told Mr. Williams that you had taken. Who was writing that list down at the time? Was it Mr. Yuhas?
A. No, sir, Mr. Yuhas wasn't. I really don't remember who was doing the writing. I think it was Giroux and Williams together, but, as I mentioned, I wouldn't say for sure on that.
Q. Now, to refresh your memory, wasn't it Mr. Giroux that was doing the writing down?
A. Well, I wouldn't say positive it was Mr. Giroux.
Q. Wasn't it Mr. Giroux, along with Mr. Williams, that was asking you the questions about where this lumber had been taken and to whom you had sold it or delivered it, and what the amounts were?

177 A. Mr. Giroux never questioned me in any way. He never asked me any questions.

Q. You say you don't know whether he was the one who was writing it down or not?

A. No, sir. I wasn't watching who wrote. I was watching fists and these things they were flogging me with. I wasn't watching who was writing what.

Q. Mr. Yuhas never hit you with anything, did he?

A. I didn't see him; no.

Q. Well, if he had you probably would have seen him, wouldn't you?

A. Mr. Yuhas and Mr. Ford were standing in the rear of me most of the time. Mr. Ford was to my right, and Mr. Yuhas to my left and around.

Q. Where was Mr. Williams?

A. He was here (indicating). He was in the front most of the time, questioning and working himself into a sweat flogging me.

Q. You would not under oath say that Mr. Yuhas at any time struck you?

A. No, I wouldn't.

Q. Would you deny the fact that it was Mr. Giroux that was asking you the questions about the amount of material that you had taken and thereupon, upon your answers, that Mr. Giroux would write them down?

178 A. No, I wouldn't say that.

Q. You know your signature when you see it?

A. Yes, sir.

Q. Is that your signature (handing document to witness)?

A. Yes, sir.

Q. Do you know if this was the document that was being written at the time you were being interrogated?

A. I wouldn't swear to it, no, sir.

Q. You wouldn't know. You wouldn't know whether this is Mr. Giroux's writing or not, would you?

A. No, I wouldn't.

Q. You wouldn't deny it?

A. No, sir.

Q. You wouldn't deny that it was Mr. Giroux that was asking you questions along with Mr. Williams?

A. I don't remember of Mr. Giroux asking me.

Mr. Roberts: Mark that for identification, please.

(Document bearing signature of Chester Robinson was thereupon marked "Defendants' Exhibit No. 1 for Identification.")

Mr. Botts: Let me look at that, please.

Q. (By Mr. Roberts) Tell us about this hedge that is on the north side of this building where you were being
179 questioned. How tall was it, and what is it made of?

A. It was a high green hedge at that time; it was shooting up to the eaves of this shack.

Q. To refresh your memory, it is a tropical plant known as aurelias, isn't it, or would you know?

A. I wouldn't know.

Q. How close to the lot line is this socalled shack?

A. Probably six feet from the hedge to the shack.

Q. There is a building in which people live right on the other side of that hedge, is there not?

A. There is a home over there; yes, sir.

Q. How far is that building from the hedge?

A. Possibly sixty or eighty feet.

Q. Wouldn't it be closer to twenty or twenty-five feet than sixty feet?

A. I really don't know how far it is to the house. The hedge always blocked the view of the home there. I don't know how far it is.

Q. To refresh your memory, where the shack was isn't there a lot where this house is, next door, and then is the corner lot?

A. You mean two homes between the shack and the—

Q. No; just two lots immediately north of what we call the shack.

180 A. I don't know how many lots there was.

Q. Let's describe this socalled shack, please, Mr. Robinson, About how big is it?

A. I would say about twenty by twenty, maybe a little smaller, with a little roof.

Q. Is it all in one room?

A. I believe so.

Q It has four wooden sides to it, does it not?

A. Yes, sir.

Q. Does it have a roof to it?

A. Yes, sir.

Q. It is really a small building rather than what would be commonly termed a shack, isn't it?

A. The Lindsley Lumber employees always referred to it as the paint shack.

Q. For what reason did they call it the paint shack?

A. They just threw odds and ends and paint cans in there.

Q. Where they painted signs, wasn't it?

A. I don't know what they did in that shack.

Q. What kind of lights were there in this building?

A. There was one light in the center of the ceiling, just a bulb, I believe; then they had a red light on the wall. It was the light Williams kept telling me to watch, because as somebody would hit me from the back I would glance behind,
181 and he would always say, "You son-of-a-bitch, you watch the light," or, "You son-of-a-bitch, you watch me." But there was only two lights, a light in the center of the ceiling and a light on the wall.

Q. Was this light right directly up at the ceiling?

A. Yes, sir.

Q. It screwed into a rosette that was attached to the ceiling?

A. I believe so.

Q. Was it a bright light, a medium light, or what?

A. It was bright enough that I could see with my glasses off who was hitting me.

Q. Was Mr. Yuhas in this building the entire time that you were there?

A. I am quite sure he was.

Q. You don't remember that for a portion of the time—

A. He was there when I came in. He was there during the questioning and during the beating. He was there when we went out and were booked at the city jail.

Q. How long were you in there?

A. Several hours. I really don't know how long.

Q. Did you see any other lights in that place except the ceiling light and this red light that you have told
182 us about?

A. No. I think that is all the lights there were.

Q. Did you see any floor light, or any kind of light similar to what we have up here (indicating)?

A. No, sir.

Q. Who came out to your home to get you?

A. Williams, Ford and Bombaci.

Q. Do you recall at the other trial you testified that it was Perry, Ford and Bombaci that came out there?

A. Perry, Ford and Bombaci?

Q. Yes, sir.

A. Yes. In about thirty seconds later I told—I pointed to Perry as being the one that took me by the arm at my front door. About thirty seconds later I told Mr. Cushman that it wasn't Mr. Perry; it was Mr. Williams. I said, "There is the man that took me by the arm, Mr. Williams." I said Mr. Williams at that time weighed around the same as Perry. Between that and the time he beat me and the time I made my testimony he had lost a lot of weight.

Q. Now, as a matter of fact, to refresh your memory, wasn't about the first thing that you said when you took the stand last

time that "about eight o'clock on March 28th three men came to my house, Ford, Bombaci and Perry," and then, after a long direct examination on the part of Mr. Botts, on
183 cross examination, probably an hour and a half later, was when you changed it to Williams, Ford and Bombaci?

A. No. There was no questions in between; it was immediately.

Q. Do you recall giving some testimony before a man by the name of Alexander on November 15th, 1948, at 710 Biscayne Building?

A. Mr. Alexander?

Q. Yes, a notary public, the court reporter up there in Cushman & Woodard's office last November?

A. I remember being to Mr. Cushman's office.

Q. Do you remember at that time you said that Giroux came to your house to get you?

A. I don't ever remember saying that Giroux came to my home, no.

Q. Who was at your home at the time they came to get you?

A. My sister, my cousin and his wife, and my mother.

Mr. Roberts: That is all.

Mr. Dressler: Your Honor, I feel under the agreement I would like to ask a few more questions on behalf of Mr. Bombaci, who is not represented by counsel.

The Court: Very good.

184 Q. (By Mr. Dressler) How far over did Mr. Bombaci lean when he looked at your wound? Did he lean over this far (illustrating)?

A. I was lying on the floor. He had kicked me. I said, "Please don't kick me in the right side." I said, "Please". I said I had been operated on for appendicitis. Even though it had been two or three years I still didn't want to be kicked in my right side. He said, "Where?" I pulled out my shirt and he leaned over. I don't know how far he leaned over, but he leaned over. I thought he was leaning to look, but, anyway, he kicked me on the side with his foot.

Q. As he leaned over he pulled his foot back and delivered a blow; is that right?

A. That is right; yes, sir.

Q. Do you know what kind of shoes Mr. Bombaci had on?

A. No, I don't.

Q. Do you know whether or not Mr. Bombaci at that time was wearing a cast as an out-patient of the Nautilus Hospital, as a war veteran, for a dislocated pelvis, a body cast?

A. No, Mr. Bombaci wasn't.

Mr. Dressler: That is all. While they are waiting I would like to ask a few questions on behalf of my client.

185 Q. Did you steal anything from the Lindsley Lumber Company?

A. No, sir.

Q. Did you pilfer any small change out of their till from various customers buying materials from you as a salesman in their place of business?

A. No, sir.

Q. Did you tell any one of the defendants or Mr. Giroux that you had done so?

A. I never did; no, sir.

Q. Mr. Robinson, on March 18th, 1947, you were an employee of the Lindsley Lumber Company, were you not, March 18th, 1947?

A. Yes, sir.

Q. What was the scope of your duties at that time? What were you employed to do?

A. As a salesman.

Q. Doing what?

A. Selling merchandise.

Q. Where?

A. At the 17th Avenue yard.

Q. In what part of the yard?

A. Lumber in the yard or any items inside.

Q. Were you so engaged during that day, selling items to various customers?

186 A. March 18th? I don't remember. I believe I was there.

Q. You were not anywhere else that day, were you?

A. I don't remember where I was the 18th of March.

Q. Do you know where you were on the 17th of March?

A. No, sir.

Q. Do you know where you were on the 19th of March?

A. No, sir. I was probably at work.

Q. Then, you were probably at work on the 18th, were you not? That is only ten days before the 28th of March.

A. That has been over two years ago. I don't remember right to the day. I know we were working every day, but I don't remember the 18th.

Q. The 18th was ten days before March 28th, about the period you claim these beatings took place. Were you or were you not working for the Lindsley Lumber Company at that time?

A. I was employed by the Lindsley Lumber Company. Whether I was at work that particular day I don't know.

Q. Were you just working off and on that day?

A. No, sir.

Q. You were working regularly, weren't you?

A. Yes, sir.

Q. You were working on the 18th, weren't you?

187 A. Yes, sir. That is right, but sometimes we worked Sundays and would have a day off during the week.

Q. On that particular day, or about the 18th, was it your custom to sell to customers for cash?

A. No, sir.

Q. You never took cash?

A. Yes, sir.

Q. Why did you say you didn't take cash on the 17th or 18th from customers of the Lindsley Lumber Company, for whom you were acting as salesman?

A. You said, was it the custom to.

Q. Your custom as a salesman was to take the cash from the customers in making sales?

A. Usually the customer would pick up his item, we would walk to the counter, write his ticket and he would pay.

Q. Answer my question. Did you collect the cash yourself?

A. At times all salesmen did.

Q. Now, get back to my question. There is nothing fancy about this. I am trying to get facts for this jury. Did you or did you not customarily as a salesman take cash from customers when they bought these various materials from you at the Lindsley Lumber yard?

188 A. If they were in the back of the yard and bought a piece of lumber, a bag of lime or something and they had their truck there they would hand me the cash, I would walk up, they would ride the truck, I would write the ticket and give them their change. It was the custom sometimes.

Q. You would sell to people coming up there with cars and they would load this stuff on their cars as they came in the yard, wouldn't they, after you sold them various materials?

A. That is right.

Q. Did you on or about that day make any sales which you did not turn into the office?

A. I never made any sales that I didn't turn into the office.

Q. Was it your custom to make a ticket every time, was that it?

A. That is right.

Q. How would you make the ticket? Where would you go to make the ticket?

A. To the front counter.

Q. In other words, you would have to go back to the office to get a ticket after you made a sale, and then return with it; is that right?

A. That is right.

Q. You would leave the money at the counter when you got the ticket; is that it?

189 A. That is right.

Q. Did you ever make any sales without getting such a ticket on or about that date?

A. I never made any sales without making out a ticket, no, sir.

Q. In other words, you accounted for every ticket, is that right, or accounted for every sale?

A. I would.

Q. Did you make any sales without a ticket?

A. No sales without a ticket.

Q. Did any customer ever hand you money about that date and you put the same in your pocket and then proceeded to make another sale without reporting to the office?

A. I never remember of putting any money in my pocket after making a sale, no, sir.

Q. You don't remember. It could have happened?

A. It is possible that it did happen, because at times we would make two or three sales before we wrote up the tickets.

Q. Wouldn't that be against the express instructions given to you by the Lindsley Lumber Company superior in your department?

A. I don't remember any instructions about making one write up a ticket every time. All the Lindsley Lumber

190 Company salesmen, every one that ever worked for Lindsley Lumber Company as a salesman, has gone to the counter and would write two or three, and I have seen salesmen write five or six with customers standing there in line. They would pick up an item, and one of these men would take the book and write up five or six sales.

Q. Would you say that was a loose system being conducted at the Lindsley Lumber yard in following that system you are talking about, if you could sell to two or three customers and put the money in your pocket without going back and writing your ticket?

A. We were not supposed to put the money in our pocket, and I don't think I ever did.

Q. You just got through saying you did.

Mr. Botts: I beg your pardon. He said, "It is possible." That is what he said.

Q. (By Mr. Dressler) When these photographs were taken, which were put in evidence, who took these photographs? Without confusing it, it has the words, "Jones' Studio" on the back of them.

A. Yes. That is Miller's Studio.
Q. Can you read that? That is Jones' Studio, isn't it?
A. Yes, sir.
Q. Not Miller's Studio?
191 A. Yes, sir.
Q. Did you go over there to have those photographs taken?
A. Yes, sir.
Q. When was that, what day of the week?
A. That was a Monday evening.
Q. That was Monday evening?
A. Yes, sir.
Q. This alleged beating took place on Saturday or Friday?
A. Friday and Saturday.
Q. So, Friday, Saturday, Sunday and Monday evening. Who took you over to the studio?
A. Sturniolo was released at the same time as I was, and we went together. We went to the Police Station, to the Chief of Police, then we went from there to the studio and had the pictures taken and from there to a doctor.
Q. What prisoners were with you and Sturniolo in the Dade County jail? Were you locked up in a general detention cell?
A. A line of cells, yes, sir.
Q. Who was in there with you? Various prisoners over the weekend? They would bring them in and put them in there with you; is that it?
192 A. I don't remember if there were any in the cell with me, but we were all in the same line of cells.
Q. You were given a solitary cell, were you?
A. No, sir.
Q. Who was in the cell with you, then?
A. I don't remember, sir. There was no one—If there were someone in there, no one connected with the case.
Q. I asked you who was in that cell with you.
A. I am saying I don't know.
Q. Do you know whether it was one, two, three or five people, or ten people?
A. Before Monday, sometime before Monday, there was someone—They placed someone in the cell with me, but I don't know who he was or what he was there for, or anything about it.
Q. What kind of a looking man was he?
A. I don't remember that.
Q. What were you doing? You didn't have anything to do except look at him, did you?
A. I don't remember who it was.

Q. If Mr. Giroux stated or will state he saw you steal funds from the Lindsley Lumber Company on March 18th, 1947, he would be lying, would he?

Mr. Botts: That is objected to.

193 The Court: I sustain the objection.

Q. (By Mr. Dressler) You didn't get in a fight with this man in that cell there that night, did you?

A. No, sir.

Q. How do you know you didn't?

A. I wasn't fighting and I wasn't talking; I was just in the cell.

Q. Was he a white man in there with you?

A. He was white, yes, sir.

Q. Was he drunk?

A. No, sir.

Q. How do you know that?

A. I can tell a drunk man when I see one.

Q. What kind of an appearing man was he? Was he a tall man or short man?

A. There was a fellow brought in for taking some rings over on the Beach, but I don't know what he looked like or what his name was or anything about it.

Q. If Mr. Priest said he was in the cell with you, Mr. Priest would be wrong, would he?

Mr. Botts: Just a minute. That is not proper cross examination.

The Court: I sustain the objection.

Mr. Dressler: That is all.

Mr. Floyd: No questions.

194 Mr. Marsh: No questions.

Mr. Botts: Come down.

(Witness excused)

MRS. ELSIE HANNON

was thereupon called as a witness on behalf of the Government, and having been first duly sworn, testified as follows:

DIRECT EXAMINATION

Q. (By Mr. Botts) State your name.

A. Mrs. Elsie Hannon.

Q. Where do you live?

A. My home town?

Q. Yes.

A. Bridgeton, New Jersey.

Q. Are you related in any way to Mr. Chester Robinson, who just preceded you on the stand?

A. I am his sister.

Q. Mrs. Hannon, on March 28th, of 1947, where were you sojourning, as distinguished from your residence?

A. I was staying with my brother.

Q. At his home here in Miami?

A. Yes, sir.

Q. About in the neighborhood of eight o'clock on the evening of the 28th of March, do you know whether any persons came to the house looking for him?

195 A. Yes, sir.

Q. Tell us what you know about that, please.

A. You mean starting from when they came in the evening or in the afternoon?

Q. In the afternoon.

A. Two men came in the afternoon and asked to see my brother, and told me—

Mr. Marsh: I object to anything that somebody or other told her.

The Court: I overrule the objection.

Q. (By Mr. Botts) Do you know who those persons were? Do you know now?

A. I know now.

Q. Who were they?

A. There was Mr. Williams—

Q. What?

A. Mr. Williams and Mr. Bombaci.

Q. Go ahead and tell what they said.

Mr. Marsh: I object on behalf of the defendant Ford to any conversation had outside of his hearing as being hearsay, as pertains to this one particular defendant.

The Court: I overrule the objection. I think you had better identify what Williams it was, whether he is a defendant.

196 Q. (By Mr. Botts) When you refer to Mr. Williams, do you refer to the Defendant Jay G. Williams, who is a defendant here?

A. Yes, sir.

Q. Was the other one Bombaci?

A. That is right.

Q. Do you refer to the Mr. Bombaci who is in the courtroom as a defendant?

A. Yes, sir.

Q. About what time in the afternoon of the 28th was it when these two men came there to the place, as near as you can recall?

A. It was sometime in the late afternoon, toward evening.

Q. What transpired?

A. They forced their way in the house and searched all the rooms and picked up several papers, bundles of papers, and then they asked me what time my brother would be home, and told me they wanted to see him, to tell him not to go away in the evening, "Because we are going to call on him in the evening."

Q. Without stating in detail what you said, did you deliver the message to your brother?

A. I did.

Q. That evening about in the neighborhood of eight
197 o'clock did any persons visit the house?

A. Yes.

Q. Do you know who they were?

A. I didn't then, but I do now.

Q. I mean, do you now?

A. Yes.

Q. Will you name who they were now, who you now know them to be?

A. Mr. Jay G. Williams and Mr. Bombaci.

Q. What transpired when they came there that night?

The Court: Is that Jay G. Williams, a defendant in the case?

Q. (By Mr. Botts) You are referring to the Defendant Williams and Bombaci?

A. Yes, sir.

The Court: A defendant in the case?

Mr. Botts: Yes.

The Court: Is that right?

The Witness: Yes, sir.

Mr. Marsh: I will object to anything that transpired between anyone not in the presence of the Defendant Ford on the ground that it would be hearsay insofar as he is concerned.

The Court: Overruled.

Q. (By Mr. Botts) Go ahead and tell what transpired that night when these men came there.

198 A. They knocked on the door.

Q. Go ahead.

A. They knocked on the door and said they were—asked for my brother, and he went outside.

Q. I beg your pardon?

A. He went outside with them and they took him away.

Q. Do you know whether any other person was in the automobile waiting out there or not?

A. I don't. It was after dark. I don't know who were in the car besides the two men.

Q. Do you know whether there was someone, or you don't know whether there was anyone in the car?

A. I don't. I couldn't see. I was in the house.

Q. When did you next see your brother after he went away in the company of Mr. Williams and Mr. Bombaci?

A. Do you mean when did I hear from him or when did I see him?

Q. When did you next see him?

A. The next—on Saturday forenoon, in the forenoon.

Q. Where was he when you saw him?

A. In jail.

Q. Do you know enough about the buildings here in Miami to know what building that jail was in?

A. I know where it is. I know exactly where the
199 building is.

Q. Do you know by what name it is commonly designated?

A. Nothing more than the jail. That is all I would be able to say.

Q. In general, where is it located?

A. Well, down on Flagler Street.

Q. Could you locate it with respect to the railroad tracks in any way?

A. Yes. It is right near the railroad tracks.

Q. I think that will be sufficient identification. Was he on the ground floor or on an upper floor of that building?

A. Upper floor.

Q. How high up, do you know?

A. It seems to me it was like the 11th. It was pretty high up.

Q. It was high up?

A. Yes; it was pretty well up.

Q. Where was he when you saw him? He was up on whatever floor it was. Was he confined in any way?

A. Yes.

Q. In what way was he confined?

A. Well, I could only see him, you know, through the bars, through the grating there.

200 Q. It was a barred enclosure? That is what I was trying to elicit.

A. Yes.

Q. Was he brought out to where you were, or did you see him through the bars only?

A. I saw him through the bars.

Q. Did you at that time examine his person in any way for evidences of physical injury?

A. Yes, sir, I did.

Q. Will you please state that in detail, Mrs. Hannon?

A. Well, his condition was terrible. His back, both sides of his back—

Q. Did he take off his shirt?

A. Yes, he did. There were welts and bruises twice as thick as your finger all across his back on both sides and on his arms. I have never saw anything like that. He was in a terrible nervous condition, trembling and partly crying, and he also had a place here on his front.

Q. What was that place on his front? Describe that.

A. Well, it was like a bruise. As he later described it, it was a dowel stick. They pushed him against the wall and pushed this in further.

Mr. Marsh: I object to what they discussed up
201 there.

The Court: Sustained.

Mr. Botts: I will produce a Supreme Court of the United States case right now on that point, that is admissible.

The Court: As to what was said?

Mr. Botts: Yes, sir.

The Court: Is that the same matter that we had before?

Mr. Botts: Yes, sir, but in that particular case it decided exactly that, that it is admissible, what was said as to how the injury took place.

Mr. Dressler. As to how the injury took place?

Mr. Botts: I will bring the case, then. I will read it.

Mr. Dressler: I can imagine how a man talks about his symptoms, but not to go into the history of the case, how it happened to him. That is absurd.

Mr. Botts: The Supreme Court of the United States disagrees with you. I will produce the authority, if there is any interest in it.

The Court: I will have to hear that.

Mr. Botts: All right. I will get it. I refer to the case of Travelers Insurance Company of Chicago against Mosley, 19 Law Edition, Page 437; that is 8 Wallace 379. The
202 question there was how an accident took place. I will read it.

(Argument to the Court.)

Mr. Botts: There is the authority. It supports exactly the proposition that I contend for, but to help counsel, I concede that that is a statement as to what constitutes res gestae. I was a little surprised to find out what the Supreme Court says the law is on that situation. But we will get at it in a different way. I just wanted to support my contention, because I try not to ask inadmissible questions.

The Court: Do you withdraw that question?

Mr. Botts: Yes. I will withdraw it, because I will get the evidence in in another way. What difference does it make how I get it in?

Q. What was the shape of this bruise that you observed on the front part of his body?

A. It seems like it was round.

Q. It was a round bruise?

A. A round bruise, yes, sir.

Q. Approximately how large was that bruise? For instance, to illustrate whether it was large or small, I show you a half dollar. Was it larger or smaller than that?

Mr. Marsh: I object to that as irrelevant and im-
203 material. It merely incumbers the record in this cause. It has nothing to do with the conspiracy case. The District Attorney has wasted practically all morning on these matters that mean nothing in this case.

The Court: I overrule the objection.

Mr. Botts: I think they do.

The Court: When it comes to the final charges you can submit any requested instructions as to the matter of conspiracy and what it should be related to.

Mr. Botts: Read the question.

(The pending question was thereupon read by the reporter.)

A. Possibly a little larger. Of course, I can't just tell you exactly.

Q. (By Mr. Botts) What was the physical appearance of it, so it could be identified?

A. Like a riddish looking bruise, as if pressure had been put there in that spot.

Q. Getting back to these bruises that you described, I believe, as welts on his person, what part of his body did you associate them with?

A. Both sides of his back.

Q. Both sides of his back?

A. Both sides, and on his arms.

Q. I hand you Government's Exhibits 4 and 5, and
204 I will ask you if you observe on either or both of those photographs any marks of the character that you have been testifying about?

A. This has no comparison. You can see the bruises a little bit. You can't see the welts. The welts were large raised welts all across the back. Of course, I saw the back, and the pictures don't mean a thing to me. I mean, I saw the actual back a few hours after it happened. I will never forget it.

Q. And the same is true with reference to Exhibit No. 5?

A. Yes, sir.

The Court: The other one was Exhibit No. 4?

Mr. Botts: Exhibit 4, yes, sir.

Q. How many of those welts, or those marks that you have described as welts, were there on his back?

A. I didn't count them, but there were several.

Q. Over what portion of the back did they extend? I mean, how much of his back was covered, or, can you recall?

A. No; I can't recall. I just remember that there were long welts on both sides of his back, and even on the arms; they had extended out on the arms.

Q. Those long welts, did they run across his back or up and down, or, do you recall?

205 A. Across.

Q. Across the back?

A. Yes.

Q. Did you make note or observe these welts by means of any of your other senses except sight?

A. Yes, sir.

Q. What did you do?

A. I put my hand on them, my hand over the ridges or raised up welts. I put my hand through the bars and put my hand on them.

Q. Did Mr. Robinson at that time make any statements with respect to whether or not he was suffering any pain as a result of those injuries?

A. Yes, he did.

Q. What did he say in that connection?

A. He said, "My heart is bothering me."

Mr. Floyd: We move to strike the answer as not being responsive to the question.

Mr. Botts: I think it is exactly responsive. I said as to his physical condition.

Mr. Floyd: You did nothing of the sort. The question, as I recall, was: "Did Mr. Robinson make any statements with regard to pain as a result of those injuries?" He said, "Yes; my heart is bothering me." She is talking about welts

206 on his back and a bruise on his upper chest. The man may have had a bad heart for years.

Mr. Botts I ask the reporter to read the question.

(The last question and answer were thereupon read by the reporter.)

The Witness: That wasn't all he said.

The Court: Wait one minute before she answers it. Is yours a motion?

Mr. Floyd: I move to strike the answer as not being responsive to the question.

The Court: I will deny the motion.

Q. (By Mr. Botts) What else did he say?

A. "The back of my head hurts. My back hurts me terribly where they kicked me." Those two things I remember he said.

Mr. Botts: You may examine.

Mr. Marsh: I move to strike the testimony of this witness pertaining to the visit that occurred on the afternoon of the 28th, the visit to the place where she was living, on the ground it is irrelevant and immaterial and it has no bearing on the case and has no connection with the conspiracy charge here.

The Court: I will deny the motion.

Q. (By Mr. Botts) By the way, Mrs. Hannon, did you visit Mr. Robinson more than one time while he was in
207 the jail?

A. Yes.

Q. When did you visit him next after that Saturday visit, if you remember?

A. I visited him before that time, but they wouldn't allow me to see him. Before that morning, I visited him in the evening; then Saturday morning sometime in the forenoon I saw him.

Q. After that visit that you have already described did you see him again while he was in the jail, if you remember?

A. Yes. I believe it was late that afternoon. On Saturday I visited him again, and I believe it was late in the afternoon.

Q. After he was released from the jail did you see him at home?

A. Yes, sir.

Q. By the way, were you present when these photographs were taken?

A. No, sir.

Q. Did you see him after he came home on Monday evening, or Monday night?

A. Yes, sir.

Q. Did you make any examination of his person at home after he came home Monday evening?
208 A. Yes, sir.

Q. I will ask you to state whether or not there had been any change in the physical appearance of his back between the time when you saw him on Saturday morning and the time when he came home on Monday evening?

A. Yes, sir. They were beginning to go down, the welts were beginning, of course, to go down. I saw him early in the forenoon. Of course, they showed very plainly then, but they were beginning, of course, to go down when I saw him Monday evening.

Q. Did you examine him on subsequent occasions so that you can inform us how long the evidences of those injuries persisted or remained visible?

Mr. Dressler: I still think we are going far afield in the conspiracy charge. If this were the substantive charge there might be something to it, but this has nothing to do with it. It is piling up cumulative evidence, which has no part in this picture.

Mr. Botts: It is cumulative; of course, it is corroborative as to Robinson.

Q. How long—

The Court: Wait a minute.

Mr. Botts: I want to submit this observation with reference to the ruling. How long those evidences persisted and
209 were observable is corroborative of Robinson's statement as to the extent of the beating and the severity of it.

The Court: The question, though, is how that is related to the conspiracy.

Mr. Botts: If the beating is related to the conspiracy, then the corroboration of the extent, corroborating the witness, is clearly admissible.

Mr. Dressler: It is the extent of corroboration. In other words, I am trying to keep this evidence in its proper channels, and not go into questions like that. I see no place for it.

The Court: What is your objection?

Mr. Dressler: I object on the ground that it is purely cumulative and is unreasonable in its extent.

The Court: I overrule the objection.

Mr. Botts: Read the question.

(The pending question was thereupon read by the reporter.)

Q. (By Mr. Botts) Did you understand the question?

A. Yes, I understand, but I just can't tell you. They lasted for sometime, but I don't remember, of course, when they disappeared altogether. I can't remember; I don't know how long they lasted.

Q. Was it an appreciable length of time?

A. Yes.

210 Mr. Botts: You may examine.

CROSS EXAMINATION

Q. (By Mr. Floyd) Did you say that Mr. Williams and Mr. Bombaci came to the home of Mr. Robinson where you were at or about two o'clock the afternoon of March 28th?

A. I said late in the afternoon.

Q. Late. About what time?

A. I can't tell you; just late in the afternoon. Sometime before he came home.

Q. Mr. Robinson wasn't home at that time?

A. No, sir.

Q. He wasn't off work yet?

A. He wasn't home. He hadn't arrived home yet.

Q. Then later the same two men came back that night; is that right?

A. Yes, sir.

Q. Then the two of them knocked on the door?

A. Yes.

Q. Would you please point out in the courtroom, if he is here, Mr. Williams and Mr. Bombaci?

A. Mr. Williams is sitting next to Mr. Ford.

Q. Come over here, if you will, please.

A. Mr. Williams is right there next to Mr. Ford, and Mr. Bombaci here (indicating).

Mr. Botts: For the record, because the record can't show it, is there any question in the record that the witness
211 identified Mr. Williams and Mr. Bombaci?

Mr. Floyd: That is right; the identity is correct.

Q. When you visited Mr. Robinson in jail was there anyone else in the cell with Mr. Robinson?

A. Yes, sir.

Q. Who?

A. Mr. Priest.

Q. You mean Henry Priest?

A. That is right.

Q. Was there anyone else beside Mr. Priest and Mr. Robinson in that cell?

A. Not that I took any notice of.

Q. But you are sure Mr. Priest was in the same cell as Mr. Robinson?

A. Yes. Yes, he was there.

Q. Do you remember, Mrs. Hannon, how large a cell it was that Mr. Priest and Mr. Robinson occupied?

A. There was some space back of them, but I really don't know; I didn't pay much attention.

Q. Was it a comparatively small cell, about the size of the jury box here, or was it larger?

A. I wouldn't know.

Q. Did you go in the cell yourself?

A. No.

Q. You were separated by the bars?

212 A. Yes, sir.

Q. There was no glass there?

A. No.

Q. You could reach through all right?
A. I could reach through.
Q. Did you see Mr. Priest all the time you were visiting Mr. Robinson?
A. Well, I saw him, but I can't say whether it was all the time or not.
Q. What was he doing at the time you saw him?
A. Standing beside my brother.
Q. Both of you talking there, all three of you together?
A. Yes, sir.
Mr. Floyd: That is all.
Q. (By Mr. Bombaci) In your testimony you stated that Mr. Williams and Bombaci came to your house and they knocked on the door; is that right?
A. Yes, sir.
Q. Did you open the door?
A. Now, you mean in the afternoon?
Q. Yes.
A. I came to the door, yes.
Q. Did you open it? You came to the door, and then what happened?
213 A. You asked to come in.
Q. I asked to come in?
A. I said why, or wanted some reason. Of course, he threw back his coat and I saw a glimpse of a badge. I didn't know what the badge was. Then I said, "O. K.".
Q. You are speaking about Bombaci now? Bombaci opened his coat and flashed out a badge?
A. That was Mr. Williams.
Q. That was Mr. Williams?
A. Yes. Then you both come in.
Q. What did Bombaci do? Did he identify himself?
A. No.
Q. You said the men came in and they searched your rooms, all over your house?
A. Yes, sir.
Q. You mean a man came in there without identifying himself and went all through your house? Is that what you are trying to convey?
A. The only identification I had, Mr. Williams turned his coat back and I got a glimpse of a badge. That is all I had; that is all I seen. Then you both came in.
Q. In other words, you took it for granted the man was a police officer?

A. I did, yes.

Q. If a police officer should come to your door
214 and perhaps flash a badge—if he was not a police officer and had no badge to show you he could not very well come in your home and search your rooms, could he?

A. No.

Q. Bombaci did not show you a badge?

A. No, but he followed Mr. Williams in.

Q. Bombaci did not show you a badge?

A. No, he didn't.

Q. Did you know Bombaci never was a police officer?

A. No, sir; I didn't know anything about him.

Q. If he was not a police officer I don't see where he would get the authority to come in your house and search your rooms. He could not come off the street and walk right in there and search your rooms, could he? The average lady would take a broom or mop or something and chase him out.

Mr. Botts: I realize this is improper, but the gentleman is not a lawyer. He does not realize that he is asking improper questions; therefore, I don't object.

The Court: Anything further? Any further cross examination?

REDIRECT EXAMINATION

Q. (By Mr. Botts) Do you distinguish between a cell and a cell block in a jail?

215 A. No, I don't. No, I wouldn't.

Q. There might have been a cell block with a number of smaller cells in it; is that correct?

A. Yes. I wouldn't know. I wouldn't know about that.

Mr. Botts: I want to thank counsel the other way for calling my attention to the fact of Mr. Priest being there. Sometimes you are very helpful. I appreciate it.

Q. What did you observe with reference to Mr. Priest?

A. He had the same marks on his back, the same kind of welts, that my brother had.

Q. He exhibited them to you?

A. He showed them; he showed the welts.

Q. What did you observe with reference to his physical condition and if any observable symptoms as to his mental condition at that time?

A. Nervous, shaky, upset, you know, just trembling, as best I could describe it.

Q. How would you compare the character of the marks on Mr. Priest's back with those on your brother's back, which you examined in detail, as you have indicated?

A. About the same. Of course, I couldn't tell exactly; about the same.

Mr. Botts: That is all.

216 Mr. Floyd: No questions.

RECROSS EXAMINATION

Q. (By Mr. Dressler) Did Mr. Priest strip down to the waist to show you his back?

A. He removed his shirt so I could see the welts on his back, the same as my brother did.

Q. There was no one else in the cell; just those two gentlemen?

A. Not that I noticed. My mind was on those two. I didn't look any farther back.

Q. You just saw those two?

A. Just those two.

Q. You don't know whether the cell was half a mile long or two feet long?

A. I couldn't tell you.

Q. You didn't see Sturniolo there, too?

A. I did not.

Q. You are positive of that?

A. I don't remember seeing him.

Q. Did you see anyone else there?

A. Not that I remember.

Mr. Dressler: That is all.

The Court: Any further cross examination? If there is, now is the time.

Mr. Botts: That is all.

(Witness excused)

217 The Court: We will take a recess until 2:00 p.m.

(A recess was then taken until 2:00 o'clock p.m. of this date.)

AFTERNOON SESSION

Miami, Florida,
Tuesday, April 19, 1949,
2:00 o'clock p.m.

(Trial resumed pursuant to noon recess. Appearances same as heretofore noted.)

The Court: Poll the jury, Mr. Clerk.

(The Clerk then polled the jury.)

CHARLES PERRY

was thereupon called as a witness on behalf of the Government, and having been first duly sworn, testified as follows:

DIRECT EXAMINATION

Q. (By Mr. Botts) State your name.
A. Charles Perry.
Q. For the record, are you related in any way to the Defendant Joseph V. Perry?
A. No.
Q. Do you know Mr. Chester Robinson?
A. Yes.

Q. Are you related in any way to Mr. Chester
218 Robinson?

A. Yes; first cousin.
Q. On March 28th, of 1947, where were you sojourning or temporarily living?
A. With Chester Robinson.
Q. At his home here in Miami?
A. Yes.
Q. Were you present on the afternoon of the 28th in the neighborhood of four or five o'clock?
A. No.
Q. You were not there when that visit was had?
A. No.
Q. Were you there at the house about eight o'clock on the night of the 28th?
A. Yes.
Q. State what transpired.
A. As I recall it, we had had supper, and just after supper there was some gentleman—there were two that I saw. One of them came to the door and called Mr. Robinson out. He went out and I looked through the window and I saw him walk to the car, stoop over a little and step in the car. Now, that is all I saw or know.
Q. By the way, where do you live now? Where is your permanent home?
A. Salem, New Jersey.

219 Q. The person you said was stooping over, was that Mr. Robinson, or someone else?

A. Oh, Chester; he is rather tall. I seen him stoop to open the door and stoop down to step in the car.
Q. Did I understand you to say you did not know who the persons were who came there?
A. I did not.
Q. When did you next see Mr. Robinson?
A. If I remember this right, this was a Friday night, and Saturday morning real early we went down to the jail to see him, but we could not get in. We went back again, I think—I

don't know the time; I will say around ten o'clock and we got in and saw him.

Q. Where was he when you saw him?

A. He was in the jail. What do you mean, just what part of the jail?

Q. Well, he was in jail. Was he inside a jail block, a block of cells, or was he outside in a corridor?

A. No. He was outside in a small corridor.

Q. Were there bars separating you from him?

A. Yes.

Q. Were you apprised of the fact—without stating what was said, were you made aware of the fact that he had suffered some injuries?

A. That was plainly visible.

220 Q. All right. Did he remove his shirt?

A. Yes, sir.

Q. Now, then, before he removed his shirt, were you apprised of the fact that he had suffered some injuries?

A. Yes.

Mr. Marsh: I object to this line of questioning on the ground it is irrelevant to the issue in this cause, and cumulative.

The Court: That is the same objection?

Mr. Marsh: Yes.

The Court: I will overrule it.

Q. (By Mr. Botts) Who was with you when you observed Mr. Robinson there in the jail in a cell block?

A. His sister.

Q. Mrs. Hannon?

A. Mrs. Hannon.

Q. Will you state what you observed with reference to his physical condition?

A. Well, I don't know just how to word it. I will have to tell you my way, and it will be the truth. We went in to see him. He had called his sister—No; that was later. We went down that morning early, before light, I guess maybe around four o'clock, or something like that. When we went

221 down again we went in and saw him.

Q. That is what I want you to tell about.

A. He was whimpering. Well, he was terribly upset. I can't express the condition he was in. He says, "I have been beat up," and he proceeded to take his shirt off and turned around back to us, and he was very well beaten up.

Q. How was that indicated, by what character of marks?

A. They were in stripes, and there were welts. I can't figure what they were made with, but they were a welt maybe an inch across them, and you could feel them on his back. It felt wavy,

and he was—he had the marks—his arms must have been in front or up when he was beaten, because the marks come clean around under his arm from his back, on both sides.

Q. Did you see any marks on the front of his person?

A. Yes.

Q. What was that?

A. Well, that was more of a—I wouldn't call that from a blow; it was more of a round—it looked like he had been stabbed with something, or something like that, and twisted, as near as I can explain it, and the skin was broken on
222 it a little. I won't say it was bleeding; I don't know whether it was or not now; I won't say that, but it was a nasty wound.

Q. But the skin had been somewhat broken?

A. Yes, sir.

Q. What was the shape of that wound?

A. Well, it was round.

Q. You described Mr. Robinson's condition as he was whimpering. Will you please explain what you mean by that?

A. It is hard to explain. He just acted as if he was all nervous. I shouldn't say what he said, should I?

Q. Yes.

Mr. Marsh: I object to what he said.

The Witness: He acted like he was afraid to do anything.

Mr. Marsh: I object to anything he said.

The Court: Yes. Leave that out, what he said. I sustain that objection. All right. Go on.

The Witness: Well, I can't say, only what he said to me.

Q. (By Mr. Botts) Let me ask you this: I will preface it by saying don't make any statement as to what he may have said as to how he received those injuries, but I will ask you whether or not he made any statement as to
223 how he then felt and his physical condition?

A. He said his back hurt him.

Mr. Marsh: I object to that on the ground it is improper and it is hearsay, asking for hearsay.

Mr. Botts: That is the question we decided this morning.

The Court: Yes; overruled.

The Witness: Does that mean for me to go on?

Q. (By Mr. Botts) Please be careful. Don't state what, if anything—I don't know whether he did or not, but if he said anything about how he was injured, who injured him, or that kind of thing, don't mention that, but if he made any statement as to how he then felt and his then physical condition, that is the question I am asking you about.

A. He asked us if we could get him a doctor. He said he had an awful distress here in this side (indicating).

Mr. Marsh: I object to that line of questioning and those answers, because they are purely hearsay; they are not part of the res gestae, and they are not covered by the cases that were cited.

The Court: Read the question and answer.

(The last question and answer were thereupon read by the reporter.)

The Court: I don't know about getting a doctor, Mr.
224 Botts.

Mr. Botts: I don't care about that. Strike that out about the doctor.

The Court: Gentlemen, you will disregard what the witness said in regard to getting a doctor; otherwise, the objection is overruled. Don't consider in your deliberations in this case anything that was said, as detailed from a witness who might have been talking to any—in this case, to Mr. Robinson, as to his being hurt or how he was hurt. All right. Disregard that in your deliberations of the case. Has he finished his answer?

Q. (By Mr. Botts) Now, did he say anything else as to his then existing physical condition, suffering pain, or anything of that character, other than what you have recounted?

A. He said his back was hurting him, and the back of his neck was hurting him. He didn't say anything more that I can recall.

Q. How long did that visit continue?

A. I don't know.

Q. Was it a substantial time? I mean, were you there for quite a few minutes?

A. I judge we were there half an hour.

Q. While you were there on that occasion did you see Mr. Priest?

225 A. Yes.

Q. Did you make a similar examination of Mr. Priest's body?

A. Not as much as I did Mr. Robinson's, but he took his shirt off and turned around back to us, so we could see his back.

Q. What was the condition of his back?

A. It showed plenty of marks. It wasn't as bad as Mr. Robinson's. Of course, I might have been more sympathetic to Robinson and looked at him more, but I remember well Mr. Priest coming out and taking off his shirt and turning around back to us.

Q. Did Mr. Priest make any reference one way or the other to his then physical condition?

A. Not that I can recall.

Q. You don't recall?

A. No.

Q. After you left there that day, Mr. Perry, when did you next see Mr. Robinson?

A. On a Monday afternoon, about—I will say after four o'clock. Now, it might have been around four, but I think it was later than four.

Q. Where was he then?

A. He came out of the jail and I was waiting downstairs for him.

226 Q. Now, then, after that, later that day, did you examine his person again?

A. Yes, sir.

Q. What was the condition of his person on the Monday afternoon late, when you examined him, with respect to what you saw on Saturday?

A. It wasn't as bad. It didn't look so severe and red and angry, like it did the first morning we saw him, or the first morning I saw him.

Q. Did you have occasion to observe him at any later time over a subsequent period?

A. Yes.

Q. For what length of time did those marks of physical injury continue to be observable, as near as you can tell?

A. I don't know. We left about a week after that. As I remember, they showed less all the time. Every time you would look at them they would show less, but I don't remember just when they went away altogether; I wouldn't know.

Mr. Botts: You may examine.

CROSS EXAMINATION

Q. (By Mr. Dressler) Did Mr. Priest and Mr. Robinson have any conversation together in the jail in your presence? Did they talk to each other?

227 A. Not as I can recall.

Q. But they were standing there close to each other when they had their shirts off; is that right?

A. Yes.

Q. Did they both show their backs to you at the same time?

A. No, not at the same time.

Q. Who showed his back first?

A. Robinson.

Q. Then Priest came up?

A. Yes, sir. He says, "See what they did to me."
Q. Was anyone else in that cell?
A. You just get me a little confused as to the cell. Now, I don't know as I would call that a cell. I don't know what you would call it.
Q. Was it an inclosed room?
A. It was a small—it wasn't a cell, I will say that. It was a small, inclosed room.
Q. How large was that room? That is what I am trying to find out.
A. Well, it is hard for me to say. I would say it was—
Q. As big as this jury box?
228 A. I don't believe over a third as big as the jury box.
Q. Just those two men were in there; is that right?
A. Yes.
Mr. Dressler: That is all.
The Witness: As I remember it.
Mr. Dressler: That is all.
Mr. Floyd: No further questions.
Mr. Botts: Come down.
(Witness excused)

ERNEST SUSSMAN
was thereupon called as a witness on behalf of the Government, and having been first duly sworn, testified as follows:

DIRECT EXAMINATION

Q. (By Mr. Botts) State your name.
A. Ernest Sussman.
Q. Where do you live?
A. 2138 Northwest 43rd Street, Dade County.
Q. How many houses do you own in that immediate vicinity?
A. Three of them.
Q. What are their respective numbers?
229 A. 2136, 2138 and 2140.
Q. You live in the middle one, 2138?
A. Yes, sir.
Q. On March 28th, of 1947, who was living in 2136?
A. In 2136 my niece and my nephew, Bob and Mrs. Sheehan, Robert Sheehan.
Q. Who was living in 2140?
A. Chester Robinson.
Q. Is that the gentleman who has been on the stand here?
A. I don't know.

Q. He has been in attendance on the court here?
A. Yes, sir.
Q. Now, then, Mr. Sussman, I will ask you whether or not you were present in your home about eight o'clock at night on the night of March 28th?
A. Yes, sir.
Q. Did you see anyone approach Mr. Robinson's home?
A. No, sir.
Q. You didn't see anything of that kind?
A. No, sir.
Q. Did you see Mr. Robinson on the evening or the night of the following Monday, which would be, I guess,
230 the 31st?
A. Yes, sir.
Q. Where did you see him?
A. In my front room; in my living room.
Q. What was he doing over there?
A. Being a neighbor he is also a friend. He asked me to go ahead and look at his body from the waist up. He didn't have an undershirt on, just a shirt. He took his shirt off. He says, "Ernie, will you please look at this?" He showed me the front and back.
Q. What was the condition that you observed?
Mr. Marsh: I will object to this line of questioning again on the ground it is irrelevant and immaterial to the issues, merely cumulative.
The Court: That is the same objection?
Mr. Marsh: Yes, sir.
The Court: Overruled.
The Witness: The rear part of his body from the waist up was highly discolored and he was covered with welts and discolorations. The front part of his body—I believe it was on the left side here (indicating)—had a round spot, approximately so big (indicating), that was blue black, with kind of a yellow coloration in there also; it was a spot approximately so big (indicating), about four inches in
231 diameter, I judge; three and a half to four inches.
Q. (By Mr. Botts) Who else was present when you made that examination?
A. My wife and I halfway believe my children; I am sure my wife was there.
Mr. Botts: You may examine.
Mr Floyd: No questions.
Mr. Botts: Come down.
(Witness excused)

MRS. ERNEST SUSSMAN

was thereupon called as a witness on behalf of the Government, and having been first duly sworn, testified as follows:

DIRECT EXAMINATION

Q. (By Mr. Botts) State your name.

A. Mrs. Ernest Sussman.

Q. Are you the wife of the gentleman who just left the stand?

A. Yes, sir, I am.

Q. You live at 2138 Northwest—

A. 43rd Street.

Q. 43rd Street?

A. Yes.

Q. Mr. Robinson, I believe, lives in No. '40?

232 A. Yes, he does.

Q. On the afternoon, late in the afternoon of the 28th of March, 1947, did you observe any persons in the vicinity of your house?

A. Yes, sir, I did. Three men drove up in a car and stopped, not at Robinson's house but at 2140—2136; that is two doors down from Robinson. We live in the center house, and we have two houses on either side of us.

Q. You own all three?

A. We own all three. My children came in and told me there was three—

The Court: Wait.

Q. (By Mr. Botts) Don't tell what your children said.

A. There was three men in the car. When I went to the house—I went over next door—these three—two men were in the house. The third man was sitting in the car.

Q. Who were the men that were in the house?

A. Mr. Williams and Mr. Ford.

Q. Are those the gentlemen sitting here (indicating)?

A. Yes, sir, they are.

Q. Will you please step to the counsel table and designate the two men that you identify as Mr. Williams and Mr. Ford?

233 A. This gentleman right here and this gentleman right here, and this third gentleman was in the car (indicating).

Mr. Dressler: Let's get the identity right. I would like to have these gentlemen stand up. Would you point out the men who went in the house?

Mr. Botts: Suppose you let all four of them stand up, and she can give them by number.

Mr. Dressler: Let her point out the ones.

Mr. Botts: All right.

The Witness: Mr. Williams and Mr. Ford.

Mr. Dressler: Will you point them out?

The Witness: The middle man, Mr. Williams, and Mr. Ford in the blue suit.

Mr. Dressler: All right. Will you stand up. These two gentlemen (indicating)?

The Witness: Yes, sir. I didn't talk to Mr. Williams. Mr. Ford talked to me at my front gate.

Mr. Dressler: This gentleman here (indicating)?

The Witness: Yes, sir.

Q. (By Mr. Botts) Who was the third one that was out in the car?

A. Mr. Bombaci.

Q. What statement, if any, did Mr. Ford make to you?

A. I asked him what he was doing in my house.
234 He said, "We are hunting Chester Robinson." I said, "Chester Robinson doesn't live here," and I told him where they lived.

Q. Did you observe whether they then went up to No. '40, where Robinson did live?

A. Mr. Williams went to '40. Mr. Ford stayed and talked to me. He never went in the yard of 2140. He stayed on my property.

Q. Where did Mr. Bombaci stay?

A. He stayed in the car. He never got out of the car.

Q. Did you see any of these people that night in that vicinity?

A. Not close enough to recognize them, no, sir.

Q. Did you see a car there?

A. I saw a car. I recognized the car, and I saw Chester get in the car, Chester Robinson, but I didn't see them go in. I just saw the three men get into the car and drive off. I didn't know at the time who they were, or anything about it.

Q. On Monday evening were you present in your home when your husband examined Mr. Robinson with his shirt off?

A. I had seen him that morning. My husband didn't see him until he came home from work in the afternoon. I
235 saw Chester as soon as he got home. It was before noon I saw him.

Q. What was the condition that you saw of his body?

Mr. Marsh: I object to that on the same ground; it is irrelevant and immaterial, merely incumbering the record. It would only have the purpose of arousing the sympathy of the jury, and serves no useful purpose in proving this case.

The Court: Overruled.

The Witness: He was terribly bruised. He had bruises all on either side of his back, on both sides of his back. He had a large bruise on his left shoulder blade.

Q. (By Mr. Botts) What was the shape of that bruise on his left shoulder?

A. It was round; I would say two inches or three inches in diameter.

Q. How would you describe the bruises on his back? What was their general character, if you can tell us?

A. Well, they were, I would say, six inches long and possibly two inches wide. They were deep and very, very discolored.

Q. What do you mean by deep?

A. Like a true bruise. They were blue in color when I saw them, but I saw them the next day and they began to get yellow.

236 Mr. Botts: That is all.

Mr. Floyd: No questions.

CROSS EXAMINATION

Q. (By Mr. Marsh) What time of day was this you are talking about, in the late afternoon or early evening?

A. It was after three-thirty in the afternoon.

Q. Between three-thirty and what time?

A. I would say four-thirty. I didn't look at the clock. I don't know definitely. I wouldn't want to swear to the time.

Q. Whose house did you first see them in?

A. In our house. We have three houses.

Q. The house you were living in, or one you own?

A. It was the center house, the one we live in, one we own. My niece was living in it at the time, but they were not home.

Q. Which house did you see these men in?

A. At 2136.

Q. Was that your home?

A. That house on our right. No, sir, not at my home. I live in the middle house.

Q. Who went into the other house? You discussed this with these men, discussed something with them in the middle house; is that right?

237 A. That is right.

Q. Then they went into another house; is that correct?

A. That is correct.

Q. Who went into the other house?
A. Mr. Williams.
Q. Anyone else?
A. No, sir. I didn't see them.
Q. Where did the other two men go?
A. Mr. Bombaci stayed in the car. Mr. Ford was talking to me. He never left my front walk. He stayed right at my gate.
Q. You are certain he didn't go into the other house?
A. Not unless he went after I went in the house. They would have had to come back to do it, because I saw them drive off.
Q. He stayed with you all the time, Mr. Ford did, until you saw them drive off; is that right?
A. That is right.
Q. Until he went to get into the car and drive off?
A. That is correct.
Q. Mr. Williams, then, is the only one that went into the other house?
A. Yes, sir. That is all I saw.
238 Q. Had you known Mr. Ford prior to this time?
A. I saw him in January. I believe it was January.
Q. I mean prior to the time you saw him in that house?
A. No, sir.
Q. When did you next see him after that occasion?
A. In this courtroom.
Q. How long was that after this had happened?
A. I would say approximately two years.
Q. That was the first time that you knew that it was Mr. Ford that was there in your house?
A. That is right.
Q. How long was Williams in the other house?
A. Oh, I would say ten minutes. He talked to Mrs. Hannon, Chester's sister.
Q. You assume that, of course?
A. Yes. I am not saying definitely; no, sir.
Q. How far was the car from where you were? How far was the car parked from where you were when you were talking to Mr. Ford, the one that Bombaci was sitting in?
A. Well, it was about fifteen to twenty feet, I should say.
Q. Mr. Bombaci didn't get out of the car the whole time; is that correct?
239 A. He did not. He raised up. He looked around, but he didn't get out of the car that I saw; no, sir.
Mr. Marsh: That is all.

REDIRECT EXAMINATION

Q. (By Mr. Botts) Were these men inside this 2136 house or were they on the outside of it?

A. They were inside.

Q. Did either of them give you his name at that time?

A. No, sir.

Q. They didn't identify themselves by name?

A. They did not. They didn't tell me what their business was or anything. I didn't ask them, because I just thought they had made an honest mistake.

Mr. Botts: That is all.

RECROSS EXAMINATION

Q. (By Mr. Marsh) You say no man identified himself to you at that time?

A. That is correct.

Q. No one showed you any credentials?

A. No, sir.

Q. No one said he was a police officer?

A. No, sir.

Q. You didn't know who they were?

A. No, sir.

240 Q. Or anything about it?

A. I knew when they drove off at night, because—

Q. I am talking about that time in the afternoon.

A. No, sir.

Q. (By Mr. Dressler) You saw these men in 2136. There was only one man in 2136?

A. No, sir. Mr. Ford and Mr. Williams were both in 2136

Q. Mr. Bombaci stayed out in the car all the time?

A. Yes, sir. Then when I told them that Mr. Robinson didn't live there, then Mr. Williams went over to Robinson's house, where he does live, and that is the way it was.

Q. (By Mr. Marsh) The lady who testified here previously—

Mr. Botts: Mrs. Hannon.

Q. (By Mr. Marsh) Mrs. Hannon, she was staying in Mr. Robinson's house; is that right?

A. That is right.

Q. That is not 2136, is it?

A. That is 2140.

Q. That is the house that Mr. Williams went into, the house that Mrs. Hannon was in?

A. That is correct.

Mr. Marsh: Thank you.

241 Mr. Botts: That is all.

(Witness excused.)

HENRY W. PRIEST

was thereupon called as a witness on behalf of the Government, and having been first duly sworn, testified as follows:

DIRECT EXAMINATION

Q. (By Mr. Botts) State your name.
A. Henry W. Priest.
Q. Where do you live?
A. 653 Northwest 27th Street, Miami.
Q. How old are you?
A. I will be fifty-two next September 8th.
Q. Where were you born?
A. Near Pensacola, Florida.
Q. How long have you lived in the Miami area?
A. Thirty-two years.
Q. What kind of work do you do for a living, Mr. Priest?
A. For the last several years I have been driving a truck.
Q. In March, of 1947, how were you employed?
A. As a truck driver for Lindsley Lumber Company.
Q. How long had you been working for Lindsley at that time?
242 A. I suppose about nine months.
Q. Were you driving a truck for them?
A. Yes, sir.
Q. Mr. Priest, on the 27th day of March, of 1947, did anything out of the ordinary happen to you there at your place of employment?
A. Yes, it did.
Q. Will you start and tell us the story of what transpired?
A. I came into the Lindsley yard office around a quarter to twelve. One of the office men says, "Mr. Priest, Mr. Lindsley wants to see you over at the main office." I said, "Just as soon as I check in I will be with you." I checked in my c.o.d. orders, all the delivery orders I had, and walked out. When I got out on the street Mr. Jay G. Williams met me on the outside; he and Mr. Yulas was together.
Q. Who did you call that last?
A. Yulas. Yuhas I guess his name is.
Q. Is it one of the defendants here? Step up to the table and identify that person.
A. That is the man on the end over there in the second row.
Q. That is the one you referred to as Mr. Yulas or Yuhas?
A. Yes, sir.
243 Q. I believe it is conceded his name is Yuhas. We will so designate him.

A. O.k.

Q. Go ahead.

A. Instead of going over to the office I went to what was known as the paint shack. There I met Mr. Williams. I don't know the other man's name—Giroux. Now, the other man's name—I can't recall them, but there was four men in there, four detectives. Mr. Williams asked me, he says, "Have a seat." He says, "What is your name?" I stated my name to him. He says, "Have you got any ailments?" I said, "None that I know of, only I stuck a nail in my arm this morning, or my hand. I went down to your company doctor and got a shot for it." He says, "Is your arm sore?" I says, "Pretty sore." "Well," he said, "that is all right." He says, "Have you got any heart trouble?" I says, "not that I know of. I never have been bothered with it." "Is there anything else wrong with you?" I said, "No, not to my knowledge, there is not."

Q. Who was that talking to you?

A. Mr. Williams. So, he says, "Have a seat." I sat down. He says, "Take off your glasses." I taken my glasses off. He says, "Do you have any idea why you come over here?" I said, "No." He says, "We work with the FBI, out of the FBI office," and says, "There has been quite a bit of thieving of
244 different materials around during the last several months, and," he says, "we want to find out about it." He says, "We don't mean to do you men any harm, but we want the big shots." I says, "I don't know anything about it." He says, "Well, you are going to find out something about it." He says, "Stand up." I raised up and stood up. He says, "Don't stand there." He put me over to a wall like this (indicating), and there was a bright light standing up there, about a hundred watt, I would imagine. He says, "Put them hands back of you." I put my hands back. He says, "God damn it," he says, "I said put them back there." I said, "That is as far as I can get them; my arm is sore." When I did, he hit me on my arm. He says, "I will cure it." I says, "O.k." So, he hit me a couple of times there. He made me stand up there for, I suppose, thirty or thirty-five minutes. I couldn't tell when it was daylight or dark. He said, "Sit down." I went to sit down on a high stool, about like is in a barroom. As I went to sit down he snatched the stool out from under me. I fell over backwards. He says, "Get up from there." I tried to get up, and when I did, why, he kicked me in the side. He said, "You son-of-a-bitch, I said get up." I says, "I am getting up as fast as I can." He says, "Sit down there." He said, "We want to know something and," he says, "you know it." I says, "I will tell you anything
245 I know." He says, "Do you know Ben over there?" That

was supposed to be the yard man. I says, "Yes, sir; I know him." He says, "Aren't you and Ben in cahoots stealing this lumber?" I said, "No, sir." I said, "Ben has give me nothing to sell, and I have never sold nothing for Ben." He says, "You are a liar." I says, "I am not no liar." Then he began to walk around and around, "Liar, Liar, Liar; you are a liar; you are a cheerful old liar." I says, "No; I am not lying to you. I am telling you right." I said, "Get Ben over here and ask him." He says, "Who else over there has been stealing?" I said, "If he has ever stole anything I don't know nothing about it." He says, "Did Frank Purnell steal anything?" I said, "Not to my knowledge, he didn't." He was a salesman. He says, "You know something. You are going to tell it, too, before you leave here." He says, "We have got plenty of time to take care of you." He says, "If you will tell us what all has been going on we will let you go." I says, "I would tell you if I knew, but I don't know." He says, "Yes, you do. you old son-of-a-bitch." He says, "You know plenty." I said, "I don't." He says, "How about Mr. Riley? Did Mr. Riley ever steal anything or help you steal anything?" I said, "No, sir. He is the superintendent over there and," I says, "to my honest opinion I don't believe that Mr. Riley has ever stole anything from the Lindsley Lumber Company."
246 He says, "Is he a personal friend of yours?" "Well," I says, "I guess you might as well call him a personal friend; he gave me my job. I have been working here under him until he was arrested." I says, "As far as I know, he is an honest man." He says, "You know something; you are going to tell it." He said, "Now, every now and then wouldn't you steal a couple of bags of cement and take them out and sell them?" I said, "No, sir. In fact, they never had no cement half the time along about those days." He says, "Yes, they did." I says, "No, they didn't." "Well," he says, "isn't it true you would take some stuff out here to your customers and sell it to them, wallboard, sheet rock, and stuff like that?" I said, "No, sir. They didn't have it around in stock at all; they couldn't get it." He says, "What did you ever take?" I says, "I only took some scrap lumber one time that went to the incinerator. I sold it for a dollar." He says, "Ha! Ha! What else did you take?" I said, "Later on they got some sheet rock down there, some little squares about that big indicating), marked 'seconds, not to be sold.'" I says, "A man out here in Brentwood Park gave me a couple of dollars for twelve or fourteen one time." I says, "That is the extent of my selling lumber or anything from Lindsley." He says, "Have you been

complained of about any of that?" I said, "No, sir. They never mentioned stealing to me." "Well," he says, "I still
247 say if you will confess that we will pay you off; we will recommend you anywhere you want to go; you can go quietly home to your family and there will be nothing done about it." I says, "I would gladly do it if I had stole anything, but I haven't." He says, "You are a God damned liar; you have." I says, "Well, I guess you know." The rest of the detectives was calling him "Chief". I says, "Chief," I says, "I haven't stole nothing. You can go as far with me as you want to, or you can chase me back. I haven't stole nothing. There was nothing there to steal." I says, "The man always checks up." He says, "You know something." I said, "No, sir, I don't." So, about that time four of them piled onto me again, and Williams— I was standing up. Williams knocked me backwards over against the wall, and I fell. He said, "Can't you get up from there, you son-of-a-bitch?" He says, "You are putting me right." I says, "Please don't hit me like that. I haven't done nothing to you to hit me for." He says, "You are doing something to hit you for, because you didn't do it." He says, "You are a cheerful liar; you did do it." I said, "I didn't, Chief." He said, "Don't 'Chief' me." About that time he knocked me down again. That was around just after the sun went down, between sundown and dark. He took and handcuffed me. He unlocked the door and he took me outside and locked me in a car that was parked right in front of
248 the paint shack. He kept me there for a period of forty or forty-five minutes, I should judge. I don't know just how long it was. I didn't have no watch. After a while he come bringing some other employee in there. "Now," he said, "now I have got you, God damn it. This fellow says you did steal." I says, "I didn't steal." He says, "You know this man?" I said, "Yes, sir: I know him." He said, "Didn't he steal?" "Well," he said, "I gave him some two by fours and they went right to the dump with the rest of it, too." Then all four of them come in there, these socalled detectives. They beat me down again. They said, "Did you steal some roofing paper?" I says, "They didn't have no roofing paper. When they would get it they would have orders. They would give me orders for five here, five there, and five to another customer." He said, "Did you steal any lime?" I said, "They never had no lime." He says, "You are a liar; they did."

Mr. Roberts: I would like to know who is "he".

The Court: Answer that question.

Q. (By Mr. Botts) Identify the person instead of using the word "he", if you can.

A. Mr. Williams was the man. So, the four detectives kept me in there. They jumped on me and beat me again. They kept— the detectives kept questioning me, what I stole, and kept informing me that they were not after us drivers
249 or the salesmen, but they, the detectives, were just chasing down what the Miami Police Department couldn't find, and they were going to show them they could find them. I says, "You can keep me here just as long as you want to, but I still tell you I didn't steal nothing." Three of the detectives went out, they left, and the one detective that was left with me, he said, "Now," he says, "the Chief is very high strung," talking about Mr. Williams.

Q. Do you know who that one that was left with you was?

A. It looks like that man sitting to the right of Mr. Ford, as to the best I can say. I am not sure whether that was the man or not, but that man favors him. I couldn't hardly tell one of them from another one, because by that time I was getting pretty nervous and my glasses was off and I couldn't hardly see, but that is the man I take him for; anyway, it was one of the detectives.

Q. All right. Go ahead.

A. So—

Mr. Dressler: Let's find out who he is referring to.

Q. (By Mr. Botts) Step down, Mr. Priest, and identify the person.

250 A. This looks like the man, right there (indicating).

Mr. Botts: Let the record show he placed his hand on the shoulder of Mr. Joseph V. Perry.

The Witness: About eleven o'clock Mr. Williams says, "Where do you live, Priest?" I says, "I live at 653 Northwest 27th Street." He says, "How much stolen stuff have you got over there?" I says, "I haven't got none over there or anywhere else." All three of the men left the place excepting the man I put my hand on. I am not positive of his identity, but I take that to be the man. Anyway, there was one detective left in there. Mr. Williams says to this man that was left in there, he says, "We are going to leave now. We are going out and get some sandwiches. We will be back in about an hour, and if that son-of-a-bitch makes one move at you," he says, "kill him; don't take no chances with him." This man says, "He will be all right." He says, "Handcuff him, anyway."

Q. Who were the three people that left? You said three people left. Can you identify those three people?

A. Mr. Williams left and Mr. Giroux left and the other detective over there is the one I take it to be that left. Anyway, there was three of them left, but the man I take to be

251 left with me was the man that I put my hand on over there. So, they were gone, the detectives was gone for an hour, I suppose, to my best—I can't say how long they were gone. Anyway, they visited my home while they were gone, searched it, found my wife in bed, made her get up in her night clothes and tormented her for thirty-five or forty minutes.

Q. Never mind that.

The Court: Don't tell what the detectives did out of your presence. Gentlemen, don't consider anything the witness said that did not take place in his presence.

The Witness: This man—

The Court: Don't consider that in your deliberations of the case.

The Witness: This detective that was left with me says, "Priest, now, let's get together." I says, "All right." He says, "Give me some news while they are gone and I believe I can still get you out of it, out of trouble." I says, "I don't know anything to tell you. If I did I would tell you, but I don't." He says, "Come on, now; be a good fellow and tell me." I says, "I can't tell you, because I don't know." He says, "Yes, you do." This detective says, "Yes, you do." I says, "No, I don't." He says, "Do you want a smoke?" I says, "You wouldn't let me smoke; you wouldn't let me smoke before." I says,
252 "There is not use to ask you if I can have a smoke now." He says, "I will tell you what I am going to do." He says, "I am going to give you a cigarette." I says, "All right. If you will, I will appreciate it." The detective that was left with me let me smoke; he gave me a cigarette and let me smoke. When I smoked that he gave me another one. He was very nice about it. Mr. Williams and the three men come back, the three detectives come back. He says, "Well, have you got any news?" He says, "He won't talk; he hasn't told me a thing." "Well, we will make him talk." They jumped on me again.

Q. Who do you mean by "they"?

A. I mean all four of the detectives. About that time the man that I took for Mr. Ford came in. Mr. Ford watched it a while. He was in there with the men, and they knocked me over to Mr. Ford, the man I took over there to be Mr. Ford. Mr. Ford just pushed me back. He says, "Fellow, let me tell you, you have beat on that old man enough." He says, "I am not going for that stuff." He says, "Stop", and they stopped. The man that I took for Mr. Ford left and I didn't see him no more, but around what I would call twelve-thirty or one o'clock the four detectives jumped on me again, and Mr. Yuhas standing right over watching them. He said, "Didn't you
253 steal five hundred feet of lumber?" I said, "No, sir. It wasn't there to steal." "Yes, it was." Mr. Ford took

a hose—No, not Mr. Ford. Mr. Williams took a hose and he hit me by the side of the head and on the back with it. He said, "You son-of-a-bitch, you are going to talk. You might think you aren't, but you are." I says, "I will say anything you want me to say. What do you want me to say?" He said, "Didn't you steal a thousand feet of flooring?" I said, "Yes, sir. Make it two thousand if you want to." He would put it down. "Didn't you steal—"

Mr. Roberts: Who would write it down? Was someone asking you the questions and someone else writing it down? We would like to know.

The Witness: One of the detectives. I can't identify the man that wrote it, because I was so near dead. I couldn't tell you all that stuff; no other human being could tell you.

Mr. Roberts: Was it Mr. Giroux? Do you know Mr. Giroux?

The Witness: I don't know one of them from the other one. If it depended on my life, I couldn't call that man over there sitting on that side of Mr. Williams.

Mr. Roberts: Was it a different man writing it down than it was asking you questions?

The Witness: Mr. Yuhas asked me the questions.

254 Mr. Roberts: Did Mr. Williams or Mr. Giroux?

The Witness: No. Mr. Yuhas, he would ask me a question, and finally they got—Mr. Yuhas asked me so many questions that I didn't know nothing about, different kinds of mouldings that I never heard of, until Mr. Yuhas went over and got one of the lumber books that thick (indicating), over to the main office. He come back—Mr. Yuhas and one of the detectives come back, and he said, "Did you steal two thousand feet of this kind of lumber?" I said, "Do you believe I did?" He said, "Yes." I said, "Just make it twice that much; I got twice that much." "Did you steal 25 bags of cement?" "Yes, sir; I stole 125 if you say I did." "Did you steal so much plaster?" "Yes, sir." "How did you haul it?" "In the truck under the lumber." "Well, did you steal wallboard?" "Yes, sir." "How much wallboard did you steal?" I says, "How much was there?" "Well," he says, "that is not the question. Did you steal fifty pieces?" "Yes, sir; I stole 150." I would tell them anything; it didn't matter to me. If they had asked me if I stole a truck, "I did, yes, sir." So, after a while this man that wrote—I don't know how many pages; it seems to me like twelve or fifteen pages of stuff that I had stole, but I didn't, he said, "Come over here and sign it." I come over there and signed every one, and I says, "Is

255 there anything else you want me to sign?" He said, "That will be enough." After that they taken me down

to the city jail, fingerprinted me, took my picture, and threw me in the Investigation Department.

Q. (By Mr. Botts) Now, then, Mr. Priest, you have given the approximate time when you were taken over to the shack. When did this session, I will call it, in the shack—when did it end? When were you taken out of the shack?

A. I couldn't tell you, because I never had no watch. I didn't see no watch, but it was after two o'clock in the morning, I know.

Q. When you left there or when you got down to the city jail?

A. No. When I left there.

Q. You went in there first—

A. About a quarter of twelve, just before lunch, before the men got out for dinner.

Q. What part of that time that you were in there was Mr. Yuhas in there?

A. All the time; practically all the time, only when he had gone after the books.

Q. What part of the time was Mr. Williams in there?

A. All the time, only when they left for a socalled lunch.

256 Q. What part of the time was Mr. Bombaci in there?

Mr. Marsh: If the Court please, I don't know whether he named anybody but two people who were in there. I suggest that he be asked who was there.

Mr. Botts: I think you are right.

The Court: I sustain the objection.

The Witness: There was four detectives in there. One of them was Mr. Williams; one of them was Mr. Bombaci, if that is the right pronunciation; I can't pronounce the other men's names; I forget them, but there was four detectives in there, anyway.

Q. (By Mr. Botts) Your best recollection, approximately what time did—

A. Mr. Perry was one of them that was in there, and Mr. Giroux.

Q. Approximately what time was it when Mr. Ford entered the shack?

Mr. Marsh: I object to that. There has been no testimony that Mr. Ford entered the shack.

Mr. Botts: There has been testimony that he entered the shack.

Q. I will ask you. Did you see Mr. Ford in that shack?

A. Yes, sir.

The Court: I overrule the objection.

257 Q. (By Mr. Botts) What time did Mr. Ford enter the shack, to your best recollection? The Judge says you can answer that.

A. I would judge it was about—I would judge it was around eleven o'clock, something like that.

Q. At night?

A. Yes, but I couldn't state the accurate time, because I was in such a mess I didn't hardly know whether it was daylight or dark.

Q. Approximately how long did Mr. Ford stay there?

A. Oh, just a short while. I would call a short while about twenty minutes, or thirty minutes, or something like that. I couldn't judge the time, but not long.

Q. Of your own knowledge, can you name the individuals who actually struck you there while you were there?

A. Mr. Williams was the worst one, that man sitting over there at the right, and Mr. Ford struck me; all four of the detectives struck me. I don't know their names. But what Mr. Ford done to me never hurt me at all, no more than you ever hurt me; he just kind of pushed me a little bit. Ford never hurt me at all. I give Ford credit for one thing; Ford stopped them, and I still say he is a gentleman. If there is one

258 on the Miami Police Force Ford is one.

Q. Did they use any sort of an implement with which to strike you?

A. Yes, sir, they did. They used what we call a hank sash cord, and a hose about that long (indicating).

Q. Did you see any other—

A. That is all I could see. I couldn't hardly see that. I felt it, though, and I feel it yet.

Q. When you left who took you down to the Police Station?

A. Mr. Williams.

Q. Who else was in the car with him?

A. I can't identify the other one, but it was one of his agents.

Q. It was one of the other men?

A. I couldn't hardly see when I left there. I couldn't even feel; I couldn't talk.

Q. Can you approximate how much of the time that you have stated that you were there were they engaged in questioning and what part of the time were they actually striking you?

A. Every time they figured I could take some more beating they would give it to me; I mean the detectives, all of them; it wasn't one, but all of them, but Williams was the worst

259 one, and when they would get tired or saw I couldn't stand any more they would beat me and hit me at the side of the head, is why I couldn't talk. I would try to talk and

couldn't. My lips was all swollen up. Williams would say, "Fellow, Fellow, Fellow, you son-of-a-bitch, talk." I would say, "I can't talk." They wouldn't even give me a drink of water.

Q. Was there any mention by anyone during that period of a possible visit to the Everglades, of anything of that kind?

A. Yes, sir.

Q. Tell us about it.

A. Mr. Williams told me—Mr. Williams took out his gun, which was unloaded. He said, "Here, Bastard," he says, "do you want to shoot me?" I says, "Not with that gun, no." He says, "Suppose you and I was out in the Everglades together and you had that gun, would you shoot me then?" I said, "Not with your bullets I wouldn't." He says, "Suppose you had your gun?" I said, "It would be a different story altogether." I says, "One of us wouldn't come back." I didn't say I would kill him. He says, "I am going to give you twenty more years for that." He says, "I am going to be the man that takes you to Raiford." He says, "You son-of-a-bitch, you will never get there." He says, "I will take you out in the Everglades and turn you out and swear you broke out. I will kill your soul." He says, "I am the man that is going to take you."

Q. When you got down to the jail what was done with you?

A. I was fingerprinted; they took my picture and threw me in the Investigation Department.

Q. Is that the picture they took of you? Does that look like it (handing picture to witness)?

A. Yes, sir.

Mr. Botts: We offer that picture in evidence.

Mr. Marsh: No objection.

(The picture was thereupon received in evidence and marked "Government's Exhibit No. 8.")

Q. (By Mr. Botts) Now, then, Mr. Priest, do you remember on Saturday morning—that would be the morning of the 29th. Do you remember seeing Mr. Robinson in the jail cell there with you?

A. Yes, sir. He wasn't in the jail cell with me. They have a cell here, and another one over here, and another one over here (indicating). Mr. Robinson was away over here (indicating). Then there was another little cell in there with four drunks in it. I was in the next one over there (indicating).

Q. They were all in the same cell block, connected with a common corridor?

A. Yes, sir, it was.

Q. Do you remember when Mr. Robinson's sister and cousin came up there?

A. Yes, sir, I do.

Q. Did you exhibit your wounds to them?

A. Yes, sir; she saw them.

Q. Were your injuries still painful by that time?

A. Yes, they sure was, and my shoulder is today. It always will be, I guess.

Q. How was your shoulder injured, could you tell?

A. From the fall over—I fell over—I was like that in the chair (illustrating). It was about that high (indicating). Mr. Williams jerked it out from me. I fell over against the baseboard down here and hit my shoulder up in there (indicating). Instead of sitting down in the chair I went right over on the floor.

Q. Did you ever go back to work for Lindsley after that?

A. No, sir.

Q. Where are you working now?

A. I am not working right at the present time.

Mr. Botts: You may examine.

Mr. Marsh: I would like to make a motion to strike the testimony of this witness insofar as the Defendant
262 Ford is concerned, anything that he stated as having transpired or any statements made by other persons during the time that Mr. Ford was not supposed to have been there, or made in his presence.

The Court: I believe we had had that before.

Mr. Marsh: That is the same motion.

The Court: Denied.

Mr. Dressler: May I ask one question.

CROSS EXAMINATION

Q. (By Mr. Dressler) You testified at a prior trial of this case, did you not, in which Mr. Williams was convicted?

A. I did; yes, sir.

Mr. Dressler: That is all.

Mr. Botts: If the Court please, I don't think the result of that trial is proper to be brought in in this case.

Mr. Dressler: I wish to differ with Mr. Botts. I think this trial is a part of the first trial. It tracks the indictment just the same, the only difference being the substantive count and the conspiracy count. That count was left from this case by this superseding indictment for reasons we need not go into here. I think we understand the reasons. It is essentially a part and parcel of that trial; in fact, it is that trial,
263 and the record so shows. I refer—

Mr. Botts: I will ask the jury to step out if we are going to argue this question.

The Court: All right. Let the jury retire.

(The jury then retired from the courtroom.)

The Court: We will take a few minutes' recess.

(A short recess was then taken, after which the following proceedings were had without the presence of the jury:)

Mr. Botts: The question, "You testified at a former trial of this case—" it was not exactly the same case, yet, there would be no serious objection, but he goes on and he says, "At which Mr. Williams was convicted." That was manifestly improper. The result of any other trial is not material. Suppose Mr. Williams was convicted and a new trial granted, suppose anything; that has no possible materiality to the issues in this particular trial, and, if it did, the statement of counsel, "At which he was convicted", is not the proper way to prove it. That statement of counsel, I think, should be stricken from the record and the jury instructed to pay no attention to it. It was merely—You see, he asked the witness, "You testified at a former trial," and he said "Yes". So far as him testifying at a former trial, if he wants to lay the ground for
264 impeachment, that is perfectly proper, but then to go ahead and say, "At which certain results transpired," that is so manifestly improper that I can't—I am a little surprised that counsel would ask that question. Now, if they want to raise the question of identity of issue, and so forth, in a proper manner that is a perfectly legitimate thing to do, but that is not the issue to be tried before this jury; that is a question of law for your Honor to decide, and that part of the question in which he said, "At which Mr. Williams was convicted" was highly improper.

Mr. Dressler: I agree with Mr. Botts as to the last part. As to that portion of it, I can bring in the official records, and bring it in that way.

Mr. Botts: That is the part I objected to, not the first part, which might be a perfectly legitimate foundation for impeachment.

The Court: He has answered it now, Mr. Dressler.

Mr. Botts: That answer might refer—you see, there are two parts to the question. "You testified at a former trial." He answered "Yes" as to that. That would be all right, but his answer "Yes" may not have had reference to the other part.

Mr. Dressler: I agree that might be misleading. There is another way of getting at it, which is the more obvious way.

265 The Court: You want to withdraw it altogether?

Mr. Dressler: It is before the jury.

Mr. Botts: May I suggest this, that the question and the answer both be withdrawn from the jury and then let Mr.

Dressler ask the question, if he cares to, "You testified at a former trial."

The Court: Is that agreeable to you?

Mr. Dressler: Yes, that is agreeable.

The Court: I will instruct the jury, then, to disregard the question—You only asked one question, didn't you?

Mr. Dressler: Yes, sir.

The Court: Disregard the question and the answer that was given to that one question.

Mr. Botts: Do you think we ought to read the question and answer so the jury would understand what they are instructed to disregard?

The Court: I think so. I think that would be a good idea, and then instruct them to disregard the answer. I believe that will be better.

Mr. Botts: No, sir, because he said he was there and he was convicted. That is the objectionable part.

The Court: That the question and the answer is stricken?

Mr. Botts: Yes, sir.

266 The Court: Let the jury come in.

(The jury then returned to the jury box.)

The Court: Mr. Guerin, read the question that was propounded by Mr. Dressler to the witness, and the answer.

(The question and answer referred to were thereupon read by the reporter.)

The Court: Gentlemen of the jury, that question and answer is withdrawn from your consideration altogether in your deliberations in this case.

Q. (By Mr. Dressler) You did testify at a prior trial in reference to the same—not the same, but similar issues, did you not?

Mr. Botts: You are to answer the question now.

A. Yes, sir.

Q. (By Mr. Floyd) What kind of light did you say was in the room, in that shack that you were taken to?

A. A regular electric light. It was—that would be in any other room, a bright light that was attached from the wall, just a high voltage light.

Q. Was it turned on by a string or attachment to the light itself, or a wall switch?

A. A string.

Q. A string to the light?

A. Yes, sir; either a string or a button, one; I couldn't say which it was, but, anyway, it was burning.

267 Q. You are sure it was on the wall?

A. It was on the wall.

Q. How high on the wall?
A. I should judge about that high (indicating).
Q. Was that the only light in the room?
A. No.
Q. Where were any other lights?
A. They were stationed in the paint shack. I couldn't describe the location of them, though. The paint shack was dimly lit.
Q. Do you know what color of light it was lit by?
A. Yes; a regular electric light.
Q. A white light?
A. No, not a white light. There was shades over them. It would give about as much light, I suppose, as this one here would (indicating), but the one I was looking at didn't have no shade on it.
Q. Were they the only two lights in the entire inclosure?
A. I couldn't answer that. I never counted the lights.
Q. Were they the only two you noticed that were burning?
A. That one that I looked at was the most powerful one.
268 Q. Was it light on the outside of the inclosure or the building?
A. I couldn't say, because I was locked up on the inside.
Q. When you entered the shade were the lights on?
A. No. It was daylight. The lights were not on.
Q. When you entered the shed at night were the lights on?
A. I never noticed no lights, because I was right in front of the shack. I couldn't see on the inside.
Q. You have answered you remember testifying in a former trial?
A. Sure; I remember that, yes.
Q. At this witness stand?
A. Yes; right here.
Q. In this courtroom?
A. In this same chair.
Q. Do you remember at that time when the question was asked you, "Who stayed with you alone, Mr. Priest, and I want you to think very carefully on this? Who stayed with you alone in the shed?" and you got down from that witness stand and went over here and put your hand on the shoulder of this man right here (indicating)? Do you remember that?
A. I don't know one of those men from the other.
Q. I am asking you, do you remember that?
269 A. No; I don't remember that.
Q. You don't remember that?
A. I don't remember that; no.

Q. Do you remember when you placed your hand on the man's shoulder saying he gave you the cigarette and the drink; do you remember that?

A. I don't.

Q. Have you had any reason whatsoever to change your testimony from the former trial and this trial?

A. No, I haven't.

Q. Do you remember, Mr. Priest, on cross examination when you were testifying in this courtroom when you testified first that the gentleman on the end over there was the man who remained with you when you were alone, and then said you were not real sure?

A. Well, I am going to tell you just exactly my opinion of it. I don't know one of those men from the other one, but I do know that one of those detectives was left with me.

Q. You are not sure now who it is?

A. I still say that the man that I pointed out looks like the man that was left with me in the shack. Anyway, there was one man left with me in the shack. They didn't leave me by myself.

Q. But you are not sure positively that you under
270 oath can swear who that man was? If you can, say so.

A. I couldn't swear under oath which man it was, but I swear there was one of them that was left with me.

Q. Let me remind you, you are under oath now.

Mr. Botts: Oh, yes; he knows it.

Mr. Floyd: I am not sure that he does.

Mr. Botts: That is improper.

The Court: I overrule the objection.

Q. (By Mr. Floyd) I am asking you now under oath in this courtroom who, if you know positively, was the man left with you alone in that shack?

A. I am just telling you, like I have formerly told you a few minutes ago, to my best knowledge—it has been over two years ago, and I couldn't tell you none of these men's names excepting Williams and Ford back there. I can't tell you one of the other men's names, but I am telling you that there was one of the men left with me.

Q. That is your answer?

A. That is my answer.

Q. Do you remember, Mr. Priest, having given a sworn deposition under oath in the case of Henry W. Priest against Dania Supply Company, a Florida corporation, in the Circuit Court of Dade County, Case No. 22058, on November 12, 1948,

in the office of Cushman & Woodard, in the Biscayne Building?

271 A. Yes.

Q. Do you remember having given testimony there?

A. I remember it; yes.

Q. Do you remember in answer to the question asked you, "How many of the men who were in the paint shop with you during that period of time actually struck you?" you answered, "Four of them"?

A. That is right.

Q. You remember that?

A. I remember it; yes.

Q. "Question: Give me the names of all of them whose names you can give, please, sir. Answer: Perry, Williams, Giroux and this Ford." Do you remember giving that answer?

A. Yes.

Q. "Question: Ford struck you? Answer: Yes, he did."

A. And Ford stopped them. Do your remember me telling you that?

Q. Mr. Priest, I am asking you the questions. You give the answers, for the benefit of the jury.

A. I will give them as near as I can.

Q. "Question: Before dark? Answer: No, sir." Do you remember having given that answer?

A. I don't remember that; no.

272 Q. But you do remember having stated that Mr. Ford struck you in the paint shed, don't you?

A. I remember it; yes.

Q. How do you reconcile, Mr. Priest, that testimony under oath and the testimony given here today that Mr. Ford was a gentleman in every respect?

A. I remember it, and I still say it.

Q. Did Mr. Ford strike you or didn't he?

A. Mr. Ford didn't what you would say hit me with his fist the first time, but Mr. Ford hit me more openly handed, but I still say that Mr. Ford never injured me, and I told you that at the time.

Q. When was this Mr. Ford hit you with his fist without injuring you?

A. It was late at night.

Q. How late?

A. I couldn't tell you what time it was. I didn't have no watch.

Q. Did you ever know?

A. No.

Q. You never have known what time it was?

A. It was late.
Q. Was it after dark?
A. Yes.

Q. Do you remember in the same deposition, Mr. Priest, and in January in this court room having sworn under oath that you saw Mr. Ford the first time at nine-thirty p.m.?

A. I didn't tell you no such thing. I told you it was at night, but I didn't have no watch, and I still say I don't know what time it was.

Q. In the same deposition to which I referred, Mr. Priest, do you remember the question having been asked you, "Is it your testimony that the first time you saw Charles R. Ford is around 9:30 or 10:00 o'clock at night? Answer: To my best knowledge, Yes."

A. I don't remember; no.
Q. You don't remember having given that answer?
A. No, I don't.
Q. As a matter of fact, Mr. Priest—
A. After two and a half years if you don't have that wrote down there, how would you tell? You couldn't do that.
Q. Mr. Priest, I didn't testify, in the first place.
A. All right. You have got it wrote down. If I had it wrote down I could tell you the exact questions you asked me before. I never wrote it down. After two years and a half how are you going to remember it? You can't do it.
Q. Let me remind you this testimony wasn't given two and a half years ago; this testimony was only given three months before. You remember having given it three months before?

A. You can't remember things offhand in three months.

Q. Actually, it was only a year and nine months after the actual events happened you gave this testimony, wasn't it?
A. I am giving you true facts the best I can remember.
Q. Have you had any reason at all, Mr. Priest, to change your testimony in regard to Charles R. Ford?
A. No.
Q. Have you talked to Charles R. Ford?
A. No; I haven't.
Q. Yesterday or today?
A. I spoke to him, yes. He spoke to me.
Q. Then, you did talk to him?
A. I spoke to him.
Q. Have you learned since January of this year, when you testified in this courtroom, actually when Mr. Charles R. Ford got off work on the night of the 27th of March, 1947?

A. Do I know what time he got off?
Q. That is right.
A. No, I don't. I don't care.
Q. As a matter of fact, don't you know, and didn't you learn since January, 1949, when you testified in here before,
275 that Mr. Ford got off work at eleven o'clock on March 27th?
A. No, sir. I don't know anything about what time he goes on and what time he gets off, and don't care.
Q. Do you know a Mrs. Gertrude McConnell?
A. No, sir, I don't.
Q. Do you know a Miss McElroy?
A. No, sir.
Q. You have never heard of her?
A. I know some McElroys down in Kendall.
Q. Do you know a Mrs. Florence McElroy?
A. No.
Q. Have you ever heard of her?
A. No, sir.
Q. Did you talk with Mr. Robinson while you were in jail?
A. Yes, sir.
Q. Did you compare backs?
A. No, sir.
Q. Did you see Mr. Robinson's back?
A. Yes, sir.
Q. Did he see yours?
A. Yes, sir.
Q. You didn't compare them, though?
A. No.
276 Q. What time, if you remember, Mr. Priest, did you first see Sergeant Ford the night of March 27th?
A. I don't remember.
Q. But it was late at night?
A. I took it to be pretty late.
Q. How long a time did Sergeant Ford remain in your presence?
A. They were knocking me around there so fast I don't remember.
Mr. Floyd: That is all.
Q. (By Mr. Marsh) You, I believe, Mr. Priest, said something about a fellow you took to be Mr. Ford in your direct testimony; am I correct in that?
A. That is right, yes, sir.
Q. What did you mean by that?
A. At that time I took Ford to be a smaller man. Of course, over two years has passed, but I still say that Ford was up

there, but Ford never done me no damage. He stopped the rest of them from doing it, though.

Q. Isn't it a fact, Mr. Priest, that you have learned since the last trial in this court that Mr. Ford was on duty until eleven o'clock?

A. It is not a fact, no, sir.

Q. You have never discussed that matter with anyone?

277 A. I don't know anything about Mr. Ford's hours, none whatsoever.

Q. Isn't it true that you changed the time from nine-thirty or ten o'clock as being the time when you first saw him to sometime after eleven o'clock—

A. Sir, I did not.

Q. Let me finish, please, sir. —after you learned he worked until eleven o'clock that night?

A. That is not true that I ever learned he worked until eleven o'clock. I don't know, and will stick to it that I don't know Mr. Ford's hours and never heard what time Mr. Ford went to work or what time he was off.

Q. You won't deny, will you, that you have previously testified that Mr. Ford appeared on the scene around nine-thirty or ten o'clock?

A. Yes, I will deny it, because I had no way of finding out what time it was.

Q. You deny that you have said that?

A. I don't remember saying it.

Q. You don't deny that you said it, do you?

A. Well, I am not making no statement on that at all. I just don't know what time it was.

Q. Who else, Mr. Priest, was in the jail when you arrived there?

A. Sturniolo and Robinson. There was a bunch of them in there. I never knew all of them. I don't know who they

278 were.

Q. Were they there when you arrived in jail?

A. As far as I can remember, they were. I don't know a whole lot about what was going on when I got there. I was just about passed out myself.

Q. What time was it that you got in jail?

A. It must have been after two o'clock in the morning; two-thirty or three o'clock, I guess.

Q. What day of the week, do you recall?

A. I can't tell you the time, because I didn't see no watch or clock up there.

Q. What day was it, do you know?

A. It must have been the 28th.

Q. This you have testified about that occurred in the paint shed, what day did that occur on?

A. I am not positive. I think it was the 27th.

Q. Do you recall what day of the week it was?

A. No.

Q. Could it have been Thursday?

A. I don't know. I am not saying, because I don't know what date it was.

Q. Are you sure it was the 27th?

A. No. I am not positive about nothing.

Q. Have you ever had an opportunity to reflect or have you ever reected back to consider what date it was that
279 this happened?

A. No, I never did study it out, never did think about the date. I just know I was in jail.

Q. Have you ever been asked before what date this occurred?

A. Yes, sir.

Q. What answers did you give them?

A. I believe I told them the 27th. I am almost positive that it was the 27th when they put me in the paint shack. It was the morning of the 28th about—maybe after two-thirty on the 28th when I entered the city jail.

Q. Don't misunderstand me. I am not attempting to dispute that. I wanted to make sure those are the dates you are talking about.

A. I will say they were.

Q. The 27th is when you went into the paint shop?

A. About a quarter of twelve on the 27th. I stayed in the paint shack until two-thirty or three o'clock on the 28th.

Q. On the morning of the 28th?

A. That is right.

Q. You were in jail that night?

A. I was in jail— I entered the jail that morning, two-thirty or three o'clock on the 28th, after being in the shack all night.

280 Q. Did Mr. Ford take you to the jail?

A. No, sir, he didn't.

Q. Did you know Mr. Ford at that time?

A. No, sir, I didn't.

Q. Did you at that time learn who he was?

A. No, sir. I just heard he was a police officer.

Q. From whom did you hear that?

A. I don't know who it was. I believe it was Captain Martin, that guards convicts, told me Ford was a radio man or something, Sergeant of the radio, or something like that.

Q. Who is Captain Martin?

A. He guards city prisoners.

Q. When did he tell you that?

A. I was talking with him one day. He asked me if I knew Mr. Ford.

Q. Was that before or after the 27th or 28th of March?

A. That was away after. Martin and I used to work together for the city.

Q. On the 27th or 28th of March did you know Mr. Ford was a police officer?

A. No, sir, I didn't.

Q. He didn't tell you he was a police officer?

A. No, sir, he didn't tell me.

281 Q. Nobody told you he was at that time?

A. No, sir.

Q. He didn't take you to jail?

A. Ford?

Q. Yes.

A. No, sir, he didn't.

Q. You testified, I believe, a while ago that you made a statement or an admission, you said you did it under duress or coercion, but you made an admission of taking some things; is that correct?

A. Sure.

Q. Was Mr. Ford present when that happened?

A. I don't remember. Just anything they would ask me.

Q. I wish you would reflect back to that evening and try to recollect to the best of your ability whether or not Mr. Ford was present at that time.

A. I don't remember if he was or not. I know Mr. Yuhas and Mr. Williams was the main strikers on that job.

Q. Will you please think back to that time—I am not attempting to rush you. Will you please think back and attempt to tell me whether or not he was there at that time?

A. I can't tell you whether Mr. Ford was present
282 when they were making me tell about stealing all of this stuff or not. I don't think he was, though. I wouldn't state positively, because I don't remember enough. My glasses was off, and I can't hardly see without them.

Q. Were your glasses off when you first saw this person that you took to be Mr. Ford?

A. Yes, sir. After looking at that light for thirty-five or forty minutes I will tell you I couldn't hardly see nothing for three or four days or a week.

Q. You were doing that prior to the time this person you spoke of came into the shed; is that right?

A. Doing what?

Q. Had been looking at the light without your glasses.
A. Sure, I did; yes.
Q. Had you ever known Mr. Ford prior to that time?
A. No, sir.
Q. When was the next time you saw this person—saw Mr. Ford?
A. I saw him at the last trial we had right here.
Q. When, about, was that, do you recall?
A. I don't know the date of the last trial.
Q. About how long was that after this thing took place in the paint shed? Was it a couple of years, about?
A. I think it was, yes.
283 Q. So, you had never seen him before, and the next time you saw him was almost two years after that; is that correct?
A. I saw Mr. Ford at the paint shack and I saw Mr. Ford again at the other trial we had right here in this same room.
Q. That is what I am asking you. Those are the only two times you had seen him up to the time of the other trial?
A. Yes.
Q. Had you seen him other times and not recognized him?
A. If I would have saw him I think I would have recognized Mr. Ford.
Q. Then, your answer is you had not seen him to know about it in the meantime?
A. Not on the streets or anywhere, no.
Q. You had never talked to him at all between those two dates?
A. No, sir.
Q. You say that night you could not see well because you hadn't your glasses on and you had been staring into a bright light?
A. Not in front of that light I couldn't, no.
Q. Did you talk to Mr. Ford at all during the last
284 trial?
Q. Where you present when he testified?
A. No.
A. No. I was on the outside and he was in here.
Q. You didn't hear anything he said, did you?
A. No.
Q. So his voice had nothing to do with your identifying him. had it?
A. No. I would know Mr. Ford now in the dark.
Q. Is it still your testimony, Mr. Priest, that you could hardly see to recognize people that night, or is that not your testimony?
A. I recognized everybody that hit me good enough.

Q. To get back to the jail, again, you say Sturniolo and Mr. Robinson were in the jail; is that right?

A. I woke up and saw—had brains enough to recognize them. I saw them there.

Q. What time did you wake up, do you have any idea?

A. I don't know. I was half nuts for a day and a half, or something like that.

Q. Did you wake up the morning after you were—the same morning as the morning you were placed in jail?

A. I would be kind of about like drunk fellows after three days' drinking. That is the way I felt all the time.

285 Q. Did you see anybody up there the morning you were placed in jail?

A. About eleven or twelve o'clock I recognized Robinson over there.

Q. That was about eleven o'clock on the 28th of March; is that correct?

A. Yes, sir.

Q. When did you see Sturniolo?

A. I saw him that same day sometime. I don't know what time it was.

Q. Was it about the same time you saw Mr. Robinson?

A. Something like that, yes.

Q. Then, did you all stay in jail there together all during that time?

A. Not together, no. We stayed in different cell blocks.

Q. Were you able to communicate with one another while you were there?

A. Well, I could look through the bars and see him.

Q. You could see Mr. Sturniolo?

A. Uh huh.

Q. Could you see Mr. Robinson?

A. Yes, I could.

Q. Could you talk to each other?

A. Yes. I would say I could see them. Yes, we talked

286 some.

Q. Did you say "yes"?

A. When we come out to eat dinner we could. When the jailer would open the doors we would all come out on the benches and talk.

Q. Did you all eat dinner together?

A. No. We would take our places out on the bench. We could eat together if we wanted to. No, we didn't sit right down and eat together.

Q. Did you see Mr. Sturniolo and Mr. Robinson in the place where you ate?

A. Yes, sir.

Q. They saw each other, I suppose, and you all saw each other?

A. Everybody sees each other; that is, in that block.

Q. Did you discuss with Mr. Sturniolo and Mr. Robinson and did they discuss with you and with each other—I mean, did the three of you discuss what had taken place in the paint shed?

A. No. I think all I said was "What are you doing up here?" They would say, "Well, nothing. What are you doing up here?" "Well, about the same thing." I saw the bumps and knots, and so forth, on Sturniolo's and Robinson's back. I had the same thing on mine.

Q. Did you ever mention that to any of them, or did
287 they mention it to you?

A. I guess all the prisoners had something to say about it. I don't remember the words they said about it, though. Naturally, a bunch of birds in jail like that will talk.

Q. Well, you must have discussed it with Mr. Robinson when his people came up there, didn't you?

A. No. His sister, I guess it was, came up there to see Robinson's back, and she saw mine, too.

Q. You took your shirt off?

A. My shirt was already off. I couldn't keep it on, my back hurt too bad.

Q. How about Sturniolo, did he have his shirt off?

A. I don't remember if he did or not.

Q. Did you see anything on his back?

A. Yes, sir, I sure did.

Q. You saw that with his shirt off?

A. Small whelps, black places, on his back about like that (indicating), all over his back, and shoulders, as far as that is concerned.

Mr. Marsh: I have no further questions.

Q. (By Mr. Strickland) You remember testifying at the former trial here during the month of January, do you not?

A. I remember testifying in this same room, yes, sir.
288 I don't remember the date of it.

Q. What was your testimony at that trial in regard to the question of whether or not Mr. Yuhas struck or hit you?

A. My testimony was that Mr. Yuhas didn't put a hand on me.

Q. Do you remember your testimony?

A. If he did it was to my back, but I didn't recognize Mr. Yuhas ever putting a hand on me at all.

Q. You never saw him hit you?

A. No, sir, I didn't.

Q. Had he hit you you would more than likely have seen it?

A. I believe I would, yes, sir. I saw all the rest of them.

Q. Do you remember your testimony in regard to whether or not Mr. Yuhas ever asked you any questions?

A. From the best of my memory, Mr. Yuhas never asked me no questions. Mr. Yuhas would talk to Mr. Williams. Mr. Yuhas was present all the time excepting when he went out on office business, to get the books. Mr. Yuhas would ask Mr. Williams questions, and if they suited, all right. If I didn't answer, Mr. Yuhas would tell Mr. Williams something and Mr. Williams would come and knock me down with a long rubber hose or anything he could get his hands on, a hank of
289 sash cord, or something. That continued time after time.

Q. Mr. Williams and Mr. Yuhas would talk together but you could not hear what they were saying; is that correct?

A. That is right.

Q. Then Mr. Williams would ask you the questions?

A. That is right. If I didn't answer him he would slap me over or knock me over.

Q. But at no time did Mr. Yuhas ask you any questions nor did he hit or strike you?

A. No, sir, he didn't.

Q. You testified earlier in regard to some book supposed to contain shortages of materials. Do you know who had that book?

A. I never testified to no book with shortages of materials. I testified that Mr. Yuhas and one of Mr. Williams' detectives went to the door, unlocked it, and went somewhere, I don't know where, and got what they called a lumber book, I suppose about that thick (indicating), and brought it back. Then they would ask me if I stole a thousand feet of stuff I had never heard of. Williams would say, "You son-of-a-bitch, didn't you steal it?" I would say, "Yes, sir, and maybe more. Put down whatever you wish to." Then they would put that down.
290 Then Mr. Yuhas would read something else and Mr. Williams would call it out after he would show Mr. Williams what it was. Mr. Williams would say, "Did you steal that?" I would say, "Did I?" "Yes." "Yes. If you say I did, I did."

Q. Did Mr. Yuhas actually have the book, or did someone else have it?

A. Mr. Yuhas actually had the book.

Q. Are you sure?

A. I am sure he did, because I saw it in his hands.

Q. Are you sure Mr. Giroux didn't have the book?

A. I am sure Mr. Yuhas had the book. Mr. Yuhas brought it in the building, because I could see him when he brought it in.

Q. You are positive now that Mr. Yuhas did not hit or strike you or ask you any questions?

A. I am positive that he didn't.

Mr. Strickland: That is all.

Mr. Botts: Any other questions, gentlemen?

Mr. Dressler: No, sir.

Mr. Botts: Come down.

(Witness excused)

PARKER PRIEST

was thereupon called as a witness on behalf of the Government, and having been first duly sworn, testified as
291 follows:

DIRECT EXAMINATION

Q. (By Mr. Botts) State your name.

A. Parker Priest.

Q. Are you the son of Mr. Henry W. Priest, who just left the stand?

A. Yes, sir.

Q. Somewhere the latter part of March, or about the 31st of March, did you see Mr. Priest?

A. Yes, sir.

Q. Did you have occasion to observe the condition of his body as to whether or not he had any marks or injuries on it?

A. I did.

Mr. Marsh: I object to that on the ground it is irrelevant and immaterial, the same grounds previously raised.

The Court: Overruled.

Q. (By Mr. Botts) When and where did you make that examination?

A. Well, my brother and myself went up to the city jail where he was being held. He was behind the bars, but we could see plainly between the bars. We were just several feet away from him.

Q. Was his shirt off?

A. Yes, sir.

292 Q. Do you know the exact day when you were up there?

A. It was on a Sunday weekend after it happened; on Sunday.

Q. If the calendar shows Saturday as the 29th, this would be Sunday the 30th; is that right?

A. Yes, sir.

Q. Did your father have his shirt off?

A. Yes, sir. He took it off and showed us.

Q. What kind of marks did you observe?

A. His whole back was red and he had whelps on it, all over the top of his shoulder and all over his back. You could see they were beat marks, marks where he was beaten.

Q. I will ask you if this was in bruised areas or in stripes or both?

A. Both.

Mr. Botts: You may examine.

Mr. Marsh: No questions.

(Witness excused)

RAFORD F. PRIEST

was thereupon called as a witness on behalf of the Government, and having been first duly sworn, testified as follows:

DIRECT EXAMINATION

Q. (By Mr. Botts) State your name.

293 A. Raford F. Priest.

Q. Are you the son of Henry W. Priest, who just was in here as a witness?

A. Yes, sir.

Q. About the 30th of March, 1947, did you have occasion to examine Mr. Priest for injuries?

A. Yes, sir.

Q. Where did that examination take place?

A. At the city jail.

Mr. Marsh: I will make the same objection, that it is irrelevant and immaterial.

The Court: That is the same objection, isn't it?

Mr. Marsh: Yes, sir.

The Court: Overruled.

Q. (By Mr. Botts) Up in the city jail in the court house?

A. Yes, sir.

Q. Will you state what condition you observed on his body?

A. His right shoulder was swelling up at that time, and it was raised up a little bit, and he had whelps on his back.

Q. How much of the area of his back was covered by those marks, those wound marks?

A. It was mostly the upper part of his body, the

294 center.

Q. What do you mean by whelp marks?

A. Whelps?

Q. Yes, sir. Just what do you mean by that?

A. The skin was raised, just like anybody that has gotten beaten with a switch, or something like that.

Q. Were there more than one of those marks?

A. Oh, yes. There was quite a few marks; I would say there was about eight or ten.

Q. Did Mr. Priest say anything about whether he was suffering pain at the time?

A. Yes, sir, he sure was. He was in a highly nervous condition, too, when we were up there.

Mr. Botts: You may examine.

Mr. Marsh: No questions.

(Witness excused)

MRS. MARY PRIEST

was thereupon called as a witness on behalf of the Government, and having been first duly sworn, testified as follows:

DIRECT EXAMINATION

Q. (By Mr. Botts) State your name.

A. Mrs. Mary Priest.

Q. Are you the wife of Mr. Henry W. Priest?

295 A. I am; yes, sir.

Q. Where were you living on the 27th day of March, of 1947?

A. At 563 Northwest 27th Street, the same place.

Q. Mrs. Priest, on the evening of the 27th, after dark, where were you?

A. After dark on that day?

Q. Yes.

A. I was home.

Q. Did you have any visitors?

A. No.

Q. On the 28th did you have any visitors?

A. Of what?

Q. Of March.

A. The 27th of March.

Q. The 27th of March is what I asked you about first.

A. I never had any visitors, no.

Q. Did anyone come there to the house? That is what I mean.

A. Oh, no; not before I went to bed, no.

Q. At any time after you went to bed did you have anyone come there?

A. Oh, yes. There was a lot of knocking on the door.

Q. That is what I want you to tell.

A. After I had gone to bed.

Q. I think you misunderstood what I was asking you.

296 A. I can't hear very good, you know. You will have to speak loud.

Q. After you had retired on the night of the 27th did someone come and knock on your door?

A. I was asleep and it woke me up.

Q. Will you tell us about what time of night that was, the best you can?

A. Well, it was between ten and eleven, but I think it was nearer eleven. I heard a lot of knocking on the door. I couldn't imagine what it was all about. There was a lot of it, see, and it woke me up. So, I got up, just as I was. I went on out. I thought it could be a messenger boy, or something like that, I had better go on to see. I never turned the light on in the living room, but there was a light in the hall. The light was shining enough for me to see.

Q. How were you dressed?

A. Just in my gown; just one garment was all I had on, not even shoes.

Q. Just your night dress?

A. That is right, a night dress. When I opened the door, why, Mr. Ford was the first one that spoke to me. I recognized him. He wanted to know if I was Mrs. Priest.

Mr. Marsh: I object to this line of questioning on the ground it is irrelevant and immaterial and has nothing to do with this charge: This is a charge of conspiring to do something
297 to certain named individuals. I don't recall this lady's name mentioned in it. I don't know how anything she could add here, unless her husband was there, or something like that, could be material to these issues.

The Court: I will overrule the objection.

Q. (By Mr. Botts) All right, go ahead.

A. He wanted to know if I was Mrs. Priest. I told him I was. At that time he took his coat lapel as though he had a badge on it and turned it like that to me (illustrating). I did like that (illustrating). I recognized he was somebody, you know, that wanted to come in, the law, or something of that sort, so, then he stepped over the door and came in and Mr. Williams right after him, and then the others followed.

Q. Who were the others?

A. Well, I couldn't recognize the other ones, but I could Mr. Williams and Mr. Ford, because they were the ones that talked to me mostly, and to each other.

Q. All right, go ahead.

A. Then, when they got inside they told me to sit down; they ordered me to sit down. Everything was in a demanding way. They never gave me any preference or anything at all. So, I did sit down, and Mr. Ford says, "Why didn't you turn this light on?" Well, you see, I told you I was in a hurry,

anyway. I went to open the door to see if it could be a messenger boy out there. I refused to turn it on, and he
298 turned it on. Mr. Ford was here and Mr. Williams was over here (indicating), and the rest of them was in front of them. So, they just sat around there, and then Mr. Williams ran all through the house, went through the dining room on into the kitchen to the back door. He saw it was locked. He turned around; he looked all around. He come back and he says, "Are you here by yourself?" Mr. Ford said the same thing. He repeated it, "Are you here by yourself?" I says, "I am." So, they all sat around me like that (illustrating), and just looked at me and never said a word for a few minutes, just looked at me. I says, "What is all of this about?" and they all began to look at each other and kind of grinned, you know, and Mr. Ford says, "You ought to know what all of this is about." I says, "Well, how can I know it?" He says, "You don't know what this is about?" I says, "No." Everything was in a demanding way, see. I says, "No, I don't." I says, "How could I?" "Well," he says, "we caught your husband this afternoon at Lindsley's." I says, "My husband?" He says, "Yes," he says, "along with some more." I says, "Where is he?" "He is in jail." He said they had him in jail. He said, "You don't know anything about this?" I says, "Why, no, I don't. I couldn't. You are telling me. You come in here telling me this." I says, "What was it? What did you catch him—When did you catch him? What did you catch
299 him for?" They said he had been stealing lumber. They said, "You don't know nothing about this?" I says, "No, I don't." He says, "How long has it been since you saw him?" I says, "Well, I haven't seen him—Last night, I believe it was, he came home, but some nights, you know, he stays off; he goes to my son's house, and I don't pay any attention to that at all." So, they started to pop one question after another to me. They would make up things and they would try to make me say he did it, see. Every time I would say, "No, no, he didn't do that."

Q. What were some of the things that they tried to get you to say he did?

A. They said, "Didn't he run over a man one time and kill him?" I says, "No." They said, "Has he ever stole anything?" I said, "No." They wanted to know whether—There are many other things, but I don't remember all of them now. Then he says, "Well, where has he been working at?" I told him him a number of places around town he had been working at. I said, "Oh, he worked at the City a long time. He is well known in Miami." I wanted them to know he is no stranger. They wanted to know what he did. I says, "A prison

guard out at the Farm." Mr. Williams said, "Did he ever steal any chickens?" I said, "No." He seemed to get kind of mad, or acted like he was mad, see, so, he says—I was sitting, you know, with my legs kind of like that (il-
300 lustrating), just like I am here. He got down on one knee. He pulled something out of his pocket. It looked like a rope, or something like that. He undone it. When he did he looked up at Mr. Ford, and Mr. Ford said something to him, and he looked kind of funny, you know, kind of smiled, and folded it up and put it back in his pocket. He started to hit my legs with it. He says, "You are lying." When he took that out he said, "You are lying." I said, "I am not lying." I said, "Do you ever go to church?" He says, "No." That was after he had put it back in his pocket. They started in asking me more questions, you know, and the others in front, they didn't have much to say at all. Every now and then they would say a little something, not very much.

Q. Do you know who those others were?

A. What is that?

Q. Do you at this time know who those other persons were?

A. No, I never. I didn't know who they were.

Q. I say, do you know now?

A. Oh, yes; I know who they are now.

Q. Who were they, if you know now?

A. Mr. Ford and Mr. Williams are the ones that did most of the talking. They talked back and forth.

Q. Who were the others? You have mentioned Ford
301 and Williams. I am asking you if you know who the others were?

A. Mr. Perry and Mr. Yuhaz was there, and the other detective, I don't think he is in here now, the one that confessed. He was there.

Q. That is Giroux?

A. Yes. But I never knew the names, see.

Q. Go ahead.

A. So, they kept that up, asking me one question after another, making things up, you know, and everything. Mr. Ford mentioned the fact something about going. Mr. Williams yet wasn't satisfied. He didn't much want to go. He looked up and he wanted to know who had done some painting around in there. I says, "Well, that is the landlord." I says, "I rent this place." So, Mr. Ford mentioned the fact again something about going, and they left. They stayed there somewhere about half an hour, or something like that. I am telling you, I I was nervous; I was a nervous wreck. When they started out they told me then that I could relax, that I could get up.

Q. That you could what?

A. That I could get up.

Q. When after that did you see your husband?

A. The next morning. I told him at the time, I says, "Well, I will find out about this." He says, "Well, how are you going to find this out?" I says, "I am going
302 to send somebody down there." The next morning I looked my son up, and I sent him down there. That was Parker.

Q. Down where?

A. Down to the jail. That is where he was at. That is where they had him.

Q. Did you go down to the jail and see him down at the jail?

A. No; I didn't go to the jail.

Q. After he had been released from the jail did you see him?

A. Yes. I saw him when he came home.

Q. About how long was that after these men had been there?

A. The first night he never came home. I think he stayed at Raford's house, so he told me. The next night he came home.

Q. Did you examine his body to see whether there were any injuries?

A. Yes. He told me about them. I saw his back was red and it was blue, especially on the right side. When he was sleeping at night he would jump. He told me it would wake him up. He said his shoulder hurt him.

Q. How long did that continue? How long did he continue to have this trouble at night, he would wake up and jump?

A. Oh, he was like that for, oh, several months.
303 He does it yet some.

Mr. Botts: You may examine.

Mr. Marsh: I renew the objection I made when this witness started testifying, and I now make it a motion to strike the testimony which I was objecting to; I also make a motion for a mistrial because of the admission of that testimony in evidence. It can serve no purpose. It is prejudicial. It has no bearing on the issues in this case.

The Court: The motion to strike the testimony is denied, except as to that portion about where she said that her husband told her so and so about his injuries. That which I have referred to, where he told her so and so, I withdraw from your consideration, Gentlemen of the Jury. The motion for a mistrial is denied.

CROSS EXAMINATION

Q. (By Mr. Floyd) Will you step over here, please, and identify by name each of the men whom you said were in your house the night of March 27th? Was it the 27th or the 28th?

Mr. Botts: I think it was the night of the 27th.

The Witness: Do you want me to identify them again?

Q. (By Mr. Floyd) Yes, ma'am.

A. Mr. Ford over there.

Q. Go right around the table and point them out.

A. Mr. Ford.

304 Mr. Botts: Place your hand on the shoulder of the man you say is Mr. Ford.

(Witness does as requested.)

Mr. Botts: Go a little slower.

Mr. Floyd: Wait until she finishes.

Mr. Botts: You just wait a minute.

Mr. Floyd: If the Court please, we are inquiring on cross examination.

Mr. Botts: If the Court please, they have asked her to identify them.

Mr. Roberts: We will identify them as a batch when she has finished, all of them, if you don't mind.

Mr. Botts: I do mind.

Mr. Floyd: I will withdraw the question. If Mr. Botts doesn't desire her to identify them, I will withdraw the question.

Mr. Botts: I object to withdrawing the question. They have asked her and she has started.

The Court: She is on cross examination.

Mr. Floyd: I will withdraw the question.

The Court: The identification is under the guidance of counsel for the defense. I sustain the objection.

Mr. Floyd: The question is withdrawn.

The Court: You want to withdraw it?

Mr. Floyd: Yes, sir.

305 Mr. Botts: I will ask it.

The Court: All right. You are allowed to withdraw it.

Q. (By Mr. Floyd) You stated, I believe, on direct examination by Mr. Botts today that Mr. Perry accompanied the group of men out to your home?

A. He did.

Q. At what time of the night was that?

A. It was between ten and eleven o'clock. I think it was nearer eleven.

Q. Near eleven o'clock that night?

A. I never looked at the clock at that time.

Q. If Mr. Priest testified that Mr. Perry remained with him at a paint shed on the Lindsley Lumber Company properey at that time, then your husband would have been wrong, would he not?

A. Well, I couldn't say anything about what he testified to.

Q. I say, if he had testified to that?

A. No. I don't know, you see. I wasn't in here when he testified.

Q. Mrs. Priest, I asked you if he had testified to that.

Mr. Botts: If the Court please, that is an improper question.

The Court: Yes. That is correct. I sustain the
306 objection.

Q. (By Mr. Floyd) How long did Mr. Perry remain at your home that night?

A. He stayed as long as the rest of them did. They all stayed the same length of time.

Q. How long did all of them stay?

A. About half an hour.

Q. Somewhere between ten-thirty and eleven; they remained half an hour; is that right?

A. That is right.

Q. Did they all leave together?

A. They all left together.

Q. None stayed behind?

A. No.

Q. Was Mr. Priest living at home at that time?

A. What is that?

Q. Was Mr. Priest living out there at that time?

A. Yes.

Q. Do you know a Mrs. Michaelove?

A. No.

Q. Have you ever heard of Florence Michaelove?

A. I don't know her.

Q. Have you ever heard of her?

A. No.

Q. You are a little hard of hearing, aren't you?
307 A. Yes, I am.

Q. Did you understand the name I mentioned, Florence Michaelove?

A. I understood it, but I don't know her at all.

Q. You have never heard of her?

A. No.

Q. Would the name of Florence McElroy mean anything to you?

A. Would it what?

Q. Do you know a Florence McElroy?

A. McElroy?

A. Yes.

A. No, I sure don't.

Q. Or a Florence Michaelroy?

A. No, I sure don't.

Q. Getting back—If you can't hear me you let me know.

A. I will.

Q. Getting back to the night you were visited by this group, I will ask you if you know who this man is (indicating)?

A. No.

Q. You don't know who he is?

A. No.

Q. Was he there that night?

308 A. No.

Q. I will ask you if you know who this man is (indicating)?

A. Yes, sir; Mr. Williams. He was there.

Q. Was he there that night?

A. He was very much there.

Q. I will ask you if you know who this man is (indicating)?

A. That is Mr. Ford. He was there. He led them in. He was the first one that stepped through the door.

Q. I will ask you if you know who this man is?

A. No, I don't know him.

Q. Was he there that night?

A. No, he wasn't.

Q. Do you know who this man is (indicating)?

A. He was there.

Q. Do you know who he is?

A. Mr. Yuhas.

Q. You are quite sure that this man was not there (indicating)?

A. He was not there.

Mr. Floyd: Let the record show that Mr. Bombaci was identified as not being present at Mrs. Priest's home. That is all.

Q. (By Mr. Roberts) There were four men, you 309 say, at your home that night?

A. No. There were five.

Q. Well, now, I think you have identified Mr. Williams, Mr. Ford, Mr. Perry and Mr. Yuhas. Who was the other one?

A. Well, I know there were five there. It is possible there could have been six, but I am positive there was five.

Q. You are positive that these are the folks who were there?

A. Yes.

Q. What did Mr. Perry, this gentleman, say, if anything?

A. You mean Mr. Perry, what did he say?

Q. Yes.

A. I don't remember him saying anything at all.

Q. What did Sergeant Ford, this gentleman, say?

A. That is Mr. Ford. He had a lot to say.

Q. Tell us what it was.

A. What is that?

Q. Tell us something of what he said.

A. I just got through telling you what he said.

Q. What did Mr. Yuhas say?

A. He never said anything. He was just there looking on.

310 Q. About what time of the night was this?

A. Between ten and eleven, just as I told you.

Q. Do you remember testifying at a similar trial here in this courtroom about two months ago?

A. Do I what?

Q. Do you remember testifying at a similar trial here about two months ago?

A. You mean when I was here the other time?

Q. That is right.

A. Why, sure, I remember I was here.

Q. Do you remember what your answer was when it was asked you if Mr. Yuhas came to your house that night?

A. You never asked me that. If you did I never heard you.

Q. Did you state at the trial at that time that Mr. Yuhas was there?

A. You never asked me that.

Q. Wasn't the question asked you who came to your house that evening?

A. What?

Q. Were you not asked the question who came to your house that evening? You were asked the question who came to your house that evening?

A. Yes; I was asked the question.

Q. You remember you told us about Mr. Williams
311 with the rope, or something or other? You remember that? You recall that?

A. I told you about Mr. Williams, just like I did a few minutes ago.

Q. You didn't tell us that Mr. Yuhas was there at the last trial, did you?

A. No, he didn't give me any names, or anything like that. He didn't have me to get up and point them out. He told me to go on out, and I did.

Q. This is the first time you have ever testified Mr. Yuhas was ever at your house; isn't that right?

A. This is the first time I have been asked.

Q. You were asked who was at your house at the last trial, were you not? That question was asked you, who was at your house?

A. This is the first time that was asked.

Q. You mean at the last trial you were not asked who came to your house that evening? You don't recall being asked who came to your house that evening?

A. They never asked me that. They never asked me to give any names like that.

Mr. Roberts: I give up.

Mr. Botts: Is that all?

Mr. Marsh: I would like to inquire.

Q. Did you know Sergeant Ford at that time?

312 A. No, I never.

Q. Did he tell you who he was that night?

A. I knew him by sight.

Q. I say, did he tell you who he was that night?

A. No. None of them told me who they were, not one of them.

Q. Had you ever seen him before that time, so far as you know?

A. No. I might have seen him around Miami, but I never paid any attention to him.

Q. You never knew that was Sergeant Ford?

A. No, I never.

Q. When was the next time you saw him after the 27th of March, 1947?

A. Right here.

Q. When?

A. During the other trial.

Q. About how long ago was that?

A. Well, I don't remember the date of it.

Q. That was in January of this year, wasn't it?

A. Yes.

Q. So, it was almost two years after you saw him, or think you saw him, on the 27th of March; isn't that right?

A. Yes, that is right.

313 Q. Had you at any time seen Sergeant Ford between the night of the 27th of March, 1947, and the date of the previous trial of this case, which was January—

A. No. I never looked him up.

Q. You never saw him that you know of?

A. No. I never looked him up.

Q. I asked you, Ma'am, did you ever see him that you know of between those two dates?

A. No, sir.

Mr. Marsh: Thank you.

Mr. Botts: You may come down.

(Witness excused)

The Court: We will take a recess until in the morning at 9:30.

(An adjournment was then taken until tomorrow, Wednesday, April 20th, 1949, at 9:30 o'clock a.m.)

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314 IN THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF FLORIDA, MIAMI DIVISION.

UNITED STATES OF AMERICA

vs.

JAY G. WILLIAMS, JOSEPH V. PERRY, JOHN S. BOMBACI, CHARLES R. FORD, ANDREW J. YUHAS and DANIA SUPPLY CO., d. b. a. LINDSLEY LUMBER CO.,

Defendants.

No. 7334-M-Cr.

Miami, Florida,

Wednesday, April 20, 1949.

The above-entitled cause came regularly on for trial before the Honorable John W. Holland, United States District Judge, and a jury, duly impanelled and sworn to try the same, in open court, at Miami, Florida, on Wednesday, April 20, 1949, at 9:30 o'clock a.m., pursuant to adjournment on yesterday, April 19, 1949.

APPEARANCES:

Fred Botts, Assistant District Attorney, on behalf of the Government.

A. C. Dressler, Esq., of the firm of Riley & Dressler, on behalf of Defendant Jay G. Williams.

Edward F. Boardman, Esq., on behalf of Defendant Joseph V. Perry.

Defendant John S. Bombaci appearing in his own behalf.

315 John D. Marsh, Esq., on behalf of Defendant Charles R. Ford.

Ernest E. Roberts, Esq., and Edwin E. Strickland, Esq., on behalf of Defendants Andrew J. Yuhas and Dania Supply Co., d. b. a. Lindsley Lumber Co.

The Court: All right, Mr. Clerk, poll the jury.

(The Clerk then polled the jury.)

The Court: Do I understand Mayer Floyd is not here and won't be here today; is that correct?

Mr. Boardman: He won't be here this morning. He may be here this afternoon.

The Court: You want to proceed without him?

Mr. Boardman: Yes, sir.

Mr. Botts: To be sure I won't forget it at a later time, I had a memorandum—

Mr. Roberts: Before we go any further with the testimony in this case, we have a motion to make, if your Honor please, and ask that the jury be withdrawn before we enter into any stipulations or take any testimony.

The Court: All right. Let the jury retire.

(The jury then retired from the courtroom.)

MOTIONS FOR MISTRIAL AND DENIALS THEREOF

Mr. Strickland: Comes now the Defendant Dania Supply Company, doing business as Lindsley Lumber Company, a defendant in this cause, and respectfully moves the

316 Court to declare a mistrial, for the following reasons:

The Court at the beginning of this trial instructed the Government's witnesses not to discuss the matter of this case with anyone other than the Prosecuting Attorney for the Government and, at their pleasure, the attorneys for the defendants. The Court further at the beginning of this trial, during the testimony of one of the Government's witnesses, Mr. Purnell, ruled that the disposition of the former civil cases in which the Dania Supply Company was a defendant was not

admissible as evidence. There appeared last night in the Miami Daily News an article—

The Court: That what was not admissible in evidence?

Mr. Strickland: That the disposition of the civil cases in which the Defendant Dania Supply Company was a defendant was not admissible.

The Court: The disposition of the other case that was tried here?

Mr. Strickland: No, sir; the civil cases.

Mr. Botts: No, sir. They were civil suits. Purnell, Robinson, Priest and Sturniolo sued the Dania Supply Company in the Circuit Court of Dade County for damages, predicated upon the alleged fact that they had been beaten, and it was with reference to the settlement of those suits that your Honor ruled that the disposition—did not rule—because I did not press the question. I don't think it is admissible.

317 Mr. Strickland: Mr. Botts asked the disposition of that case and an objection was made. Your Honor ruled that the disposition of those cases was not admissible.

Mr. Botts: And I think correctly.

Mr. Strickland: There appeared in the Miami Daily News, a local Miami paper, dated *March 30th*, an item on the front page under the caption, "Late Flashes", as follows:

The Court: What date was that?

Mr. Botts: Yesterday.

Mr. Strickland: It was April 19th. "Lumber Firm Settles 4 Rights Claims. The Lindsley Lumber Co. has made out-of-court settlements in damage claims brought by four former employes, who are now government witnesses in a civil rights trial in Federal court. The four, who filed suits for $100,000 each in connection with alleged beatings two years ago, are Frank Purnell, Jr., who said he received $5,000; Chester Robinson, $3,500; Henry Priest, $2,250 and attorney's fees, and Joseph Sturniolo, an undisclosed amount."

There also appeared in the Miami Herald, a local Miami paper, this morning, April 20th, under Section "B", Page 1, under the caption, "Brutal Beating Charged in Civil Rights Retrial," the following language, and I quote the last part of the article, because that is the pertinent part in which I

318 am interested. I will introduce these and ask they be entered into evidence and marked as such.

Mr. Botts: How is that?

Mr. Strickland: Reading the last part of the article—

Mr. Botts: What was the last, about putting them in evidence?

Mr. Strickland: I am going to ask that they be entered into evidence and marked as such.

Mr. Botts: I have no objection if you put them in evidence.

Mr. Roberts: That is in support of the motion.

Mr. Botts: Oh, that is different.

Mr. Strickland: (Reading) "Five damage suits, totaling $500,000, brought by the lumber theft suspects who claim they were beaten, were settled out of court and dismissed last week, according to Circuit Court records.

"Frank Purnell, Jr., said he received $5,000 in settlement of his two $100,000 suits—one against Dania Supply Co., and one against A. R. Lindsley, an official of the firm.

"All of the suits sought $100,000 damages each in connection with the alleged beatings on the lumber firm's property, 3810 N. W. 17th Ave.

"Robinson said he received $3,500, Priest $4,500 and Joseph Sturniolo $3,500 as settlement amounts
319 from the Dania Supply Co."

At this time the Defendant Dania Supply Company moves the Court (1) To call the jury back and poll the jury individually as to whether or not they have read the article, either one, appearing in the two papers; (2) That the Court call the Government witnesses and ask whether or not they have discussed this case subsequent to their instructions not to discuss it with anyone, then if there is an answer in the affirmative to either one of those motions, then (3) The Defendant Dania Supply Company moves the Court to allow it to withdraw one juror from the box and declare a mistrial as to the Defendant Dania Supply Company.

Mr. Botts: If the Court please, the Court having ruled that that testimony was inadmissible, and I think correctly so, certainly the witnesses were not in any way prohibited from discussing facts which were not admissible in testimony. I know it to be a fact that a newspaper reporter questioned these men, because I was standing there listening to it, and they stated that they had a settlement. That was not admissible testimony and, therefore, it was no violation of your Honor's instructions not to discuss the case. So, that is the situation. Of course, it is well established that the reading of articles in newspapers, even if the jury read them, is merely a matter of instruction by the Court and not a ground for mistrial.

320 Mr. Roberts: As I recall the Court's instructions to the witnesses, it was not that you are prohibited from discussing any testimony that comes before this Court, but you can discuss any testimony which is not allowed in this court. Your Honor did not draw that dividing line between admissible

and inadmissible testimony. I am sure your Honor would not allow a layman to determine which is admissible and which is not admissible testimony. My understanding of your Honor's instructions to the witnesses, they were not to discuss this case.

Mr. Botts: That is not this case. If it is not admissible evidence it is not this case.

Mr. Roberts: That is all a part of this case, pleadings and what happened and subsequent effects and prior matters, they are all a part of this case, whether admissible or not admissible. I respectfully submit to your Honor that those Government witnesses have violated your Honor's instructions, and I want to further now ask the Court to strike all of their testimony given before this jury, because—Would you like to sit down?

Mr. Botts: No. I would rather stand up.

Mr. Roberts: —because of their violation of your Honor's instructions at the inception of this trial. Now, there is a huge amount of damage that has been done to the Lindsley Lumber Company in this case if any one of those jurors have
321 seen either of those articles in these two newspapers. Your Honor well knows that all jurors are just human beings.

(Argument to the Court)

Mr. Marsh: Before your Honor rules on that motion, I would like on behalf of the Defendant Sergeant Ford to join in the motion, since this is a conspiracy charge and he is charged with conspiring with the Lindsley Lumber Company among other defendants.

Mr. Dressler: The same as to Jay G. Williams, and on behalf of Mr. Bombaci I will request permission of the Court to add him to that.

Mr. Boardman: I would like to submit the same motion on behalf of Joseph V. Perry, and add a further ground: They are all common defendants in this cause, part and parcel of the same matter, and anything that would affect one defendant, in my opinion, in this case would affect the others.

Mr. Roberts: We will also ask that Mr. Yuhas be included in that motion.

Mr. Botts: I might say matters of that kind are always taken care of by charges of the Court. They are attempting to set up a boogie man and try to knock him down.

The Court: Each and every of the motions is denied. If you want to put the papers in in support of your motion, why, just identify them.

322 Mr. Botts: I have no objection, but I would suggest that at this time the Court admonish the Clerk when he gives the jury the exhibits that he does not give them these exhibits.

The Court: Oh, no; those exhibits are not to go to the jury.
Mr. Botts: I understand that.
The Court: Mr. Clerk, you adhere to that instruction.

(The article appearing in the Miami Daily News, of April 19, 1949, was thereupon marked "Defendants' Exhibit A")

(The article appearing in the Miami Herald, of April 20, 1949, was thereupon marked "Defendants' Exhibit B")

Mr. Roberts: We would like a specific exception in the record to your Honor's ruling on behalf of the corporate defendant and Mr. Yuhas, and let's say that the two newspaper excerpts, that is, the one from the Miami Daily News of Tuesday evening, April 19th, and the one from the Miami Herald of Wednesday, April 20th, are introduced in support of the motion just made.

The Court: All right. Mr. Clerk, observe those instructions, those are not to go to the jury room.

Mr. Botts: I shall concede they will be used in support of the motions in all cases.

323 Mr. Dressler: I have another motion to make while the jury is out.

The Court: Mr. Roberts, I believe, asked a specific exception. An exception to the ruling of the Court is noted in favor of each and every defendant, including Mr. Bombaci.

Mr. Dressler: While the jury is out I would like to make this motion, to conserve time—

The Court: In connection with that, I ask counsel in connection with their requests for instructions to submit any instructions that they desire which are applicable in connection with these matters that we have had this morning for consideration by the Court at the end of the case, when written requests for instructions are generally submitted.

Mr. Dressler: I would like to also make a motion for a mistrial on behalf of my client, Jay G. Williams, on the ground that there have been filed against this defendant and the other defendants in this particular case the following cases: Case No. 7240-M-Criminal, under an indictment returned by the grand jury on October 22, 1948, in which the individual defendants, Jay G. Williams, Joseph V. Perry, Henry B. Giroux, John S. Bombaci, Charles R. Ford and Andrew J. Yuhas, were indicted for violation of Title 18, USC 51, 1946 Edition,

324 and Title 18, USC 52, 1946 Edition, being the same facts and transaction which are complained of in this conspiracy case, that that case was later on motion made by one of the defendants nolle prossed by the Government after

the defendants had appeared and filed their bonds in that case; that thereafter there was filed against these defendants Case No. 7279-M-Criminal, United States of America, Plaintiff, versus Jay G. Williams, Joseph V. Perry, John S. Bombaci, Charles R. Ford, Andrew J. Yuhas and Lindsley Lumber Company, a corporation, Defendants. In that case, which was tried, a verdict was entered by the jury, that the defendant Jay G. Williams was convicted of Counts 2, 4, 6 and 8, Joseph V. Perry, John S. Bombaci, Charles R. Ford, Andrew J. Yuhas and Lindsley Lumber Company were found not guilty of Counts 2, 4, 6 and 8, and that the jury could not agree on the remainder of the counts, which were the conspiracy counts, which are now being tried in this case, that Case No. 7279 was elected by the Government not to be tried, but a superseding indictment was filed, which tracked the indictment, as amended, which is now being tried in the instant case, that on February 25th, 1949, after the trial of the last mentioned case, an indictment was returned by the grand jury, consisting of 222 pages, for perjury, against Jay G. Williams, Charles R. Ford, John S. Bombaci and Andrew J. Yuhas for violation of Title 18, USC 1621, that accompanying the indict-
325 ment in a companion case, the instant case, No. 7334, was led a conspiracy indictment, in which the Lindsley Lumber Company is referred to also as the Dania Supply Company, which tracks the indictment for conspiracy in the case in which my client was convicted, and the ground for my motion is that my client has been so intimidated and coerced by the perjury indictment being filed herein he is fearful of taking the stand by reason of this long perjury indictment, that he is afraid to testify in that he may be further indicted for perjury, and that it is an abuse of due process of law under the Constitution of the United States that these proceedings have taken this form. I, therefore, ask for a mistrial in this case.

The Court: What do you say to that?

Mr. Botts: I don't think it needs any answer.

The Court: I didn't understand you.

Mr. Botts: I say, I don't think it requires any answer.

Mr. Dressler: I might add to that that Mr. Bombaci is without counsel; I can offer him in support of that motion and state that he is without counsel because of the numerous indictments filed against him, which has wasted his funds, has embarrassed all of the defendants and has resulted in my client having to have new counsel, and that has been a wearing out process, which is still continuing, and is an abuse
326 of the due process of this court.

The Court: I don't understand about new counsel. Didn't you represent Mr. Williams in the other case?

Mr. Dressler: No, sir, I did not.

The Court: Who represented him in that case?

Mr. Dressler: Mr. Cushman, I believe.

Mr. Botts: Bill Pruitt.

Mr. Roberts: The Defendant Yuhas would like to join in the motion just made by Mr. Dressler.

Mr. Marsh: The Defendant Ford would like to join in that same motion, and also add thereto because he was required to expend all of his available funds in the trial of the first case his counsel there employed has not represented him in the present case, because Mr. Ford was unable to compensate him for further services.

The Court: I didn't understand that.

Mr. Marsh: I say, because of the fact that Mr. Ford's limited funds were exhausted in the previous trial of this cause his previous counsel, who was Mr. L. J. Cushman, is not available to serve him at the present trial. Mr. Cushman, having been present at the previous trial, would have been in much better position that I am to defend Mr. Ford. It is only because Mr. Ford's funds were exhausted in the first trial that he is unable to retain Mr. Cushman for this case, and also bonds, and so forth.

327 The Court: Also what?

Mr. Marsh: Furnishing bonds in these cases.

The Court: You mean in making bond?

Mr. Marsh: Yes, sir.

The Court: He did give bond, didn't he?

Mr. Marsh: Yes, sir, he did.

The Court: All those motions are denied. Were they joined in by all the counsel?

Mr. Boardman: I didn't join in the last motion, because Joseph V. Perry was not indicted for perjury, but as to the other matters and things about which counsel complained I join in that motion for a mistrial, as I did previously.

The Court: Any grounds of the motion as apply to Mr. Bombaci, they may be considered as applicable to him. All motions are denied.

Mr. Botts: Any other motions?

The Court: I shall not say anything to the jury about anything that is in the papers at this time. You gentlemen may consider those matters in connection with your requests for instructions.

Mr. Botts: If the Court please, before the jury comes in, Mr. Roberts and I have agreed upon a stipulation, which I thought I was about to dictate, and which I would prefer to dictate in the absence of the jury and get his con-

328 currence in it.

It is stipulated, and this stipulation is to be read into

the record, that the Defendant Dania Supply Company is a Florida corporation, and that it has customarily done business under the name of Lindsley Lumber Company.

Mr. Roberts: That is right.

Mr. Botts: When the jury comes in I want that stipulation read to them.

Mr. Dressler: In support of my motion made in this case, No. 7334, which is the case on trial, I ask the Court to take judicial notice of the indictments I referred to in the criminal cases lately pending in this court, under No. 7240, 7333 and 7279. I have the original files in court, and ask, if it is necessary at a later date, I can substitute either certified copies or true copies.

Mr. Botts: To avoid the necessity of putting copies in, I stipulate that counsel's statement with reference to those indictments is factually correct, if that will be of any assistance.

Mr. Dressler: I just asked the Court to take judicial notice that those are the indictments in those cases, and that I may have the privilege at a later date, if necessary, to supply certified copies or true copies.

Mr. Botts: That is agreeable.

The Court: Let that stipulation be noted. It has
329 the sanction of the Court.

The Court: That was in 7240—the perjury is under No.—

Mr. Dressler: No. 7333 is the perjury indictment.

The Court: Then, it is No. 7240, 7279 and 7333. This one is No. 7374?

Mr. Dressler: That is the instant case, yes.

The Court: All right. Let the jury come in.

(The jury then returned to the jury box.)

Mr. Botts: If the Court please, I will ask the court reporter to read to the jury the stipulation which was agreed upon between Mr. Roberts and myself in the absence of the jury.

(The stipulation referred to was thereupon read by the reporter, as follows: "It is stipulated that the Defendant Dania Supply Company is a Florida corporation, and that it has customarily done business under the name of Lindsley Lumber Company.")

Mr. Botts: Call Mr. John P. Sturniolo.

330 JOHN PAUL STURNIOLO, Jr.,

was thereupon called as a witness on behalf of the Government, and having been first duly sworn, testified as follows:

DIRECT EXAMINATION

Q. (By Mr. Botts) State your name.
A. John Paul Sturniolo, Jr.
Q. Where do you live?
A. 1940 Northwest 52nd Street.
Q. How old are you?
A. Twenty-eight.
Q. What is your present occupation?
A. I am working in construction work right now.
Q. During the month of March, in 1947, how were you employed?
A. I was employed with the Lindsley Lumber Company.
Q. Doing what kind of work?
A. Truck driver.
Q. How long had you been in their employ on March 26th, 1947?
A. Just a shade less than three months.
Q. On March 26th, 1947, at the place of business of the Lindsley Lumber Company on Northwest 17th Avenue about 38th Street, in connection with your employment there did anything unusual occur?
331 A. Well, it was unusual from one standpoint. I was told they wanted me over in the office.
Q. I am just asking you if anything unusual occurred.
A. Yes, sir.
Q. Will you describe that occurrence, telling who participated in it and what was said or done?
A. Well, the office manager at the time, Mr. Riley, told me I was wanted over in the office. Mr. Yuhas was standing there, and he said he would escort me over to the office. Instead of that he took me over to the paint shed on the north side of the lot; alongside the office, that is.
Q. About what time of the day was that, Mr. Sturniolo?
A. That was about five-thirty in the evening.
Q. Will you describe briefly the location of that paint shed or paint shack, whatever you call it?
A. Well, it was on the north side of Lindsley's lot on the other street.
Q. You mean on the west side of 17th Avenue?
A. Yes, sir, on the west side of 17th Avenue, on the north side of their lot. That was separated from the main office building.
Q. What kind of a building was it, briefly?
A. Well, it was a small shed they used to store their paints and paint signs and odds and ends like that.

Q. Was it a shed or was it inclosed on all four sides?
332 A. It was inclosed on all four sides.
Q. About what size?
A. I would say about ten or twelve feet across and then about twenty-five or thirty feet long.
Q. And lengthwise it was running east and west or north and south?
A. East and west.
Q. Where was the entrance door?
A. Well, there was an entrance door on the east side of the building, and there was a loading platform on the west side.
Q. When you entered that building did Mr. Yuhas accompany you?
A. Yes, sir.
Q. Were there any other persons in the building when you entered the same?
A. Yes, sir.
Q. Who were they, if you know?
A. Well, there was Williams.
Q. When you say Williams, do you refer to the defendant Jay G. Williams?
A. That is right, the man they called Chief at that time. I later hitched up the name with the name Jay G. Williams.
333 Q. Who else?
A. There was—Mr. Yuhas was there. There was Giroux and Bombaci. I don't know whether Mr. Perry or Mr. Ford was there at that time.
Q. State what took place.
A. Well, they questioned me about some thefts in the organization, or stealing going on inside of the lumber yard. With that questioning they punctuated it with various threats and beatings with various instruments.
Mr. Marsh: I object to this testimony on the ground that it is not shown that the Defendant Ford was present, and there has been no predicate laid for the introduction of testimony or conversations occurring out of his presence and it is hearsay.
The Court: That objection is overruled. You will please remember to make any requests for instructions on that phase of the matter at the end of the case.
Q. (By Mr. Botts) Now, then, you used the words you were threatened. Will you please, as near as you can, state the purport, at least, of the words used, which you characterize as a threat and, wherever you can, indicate which one of the persons in the shack used the words to which you refer?

A. Well, Williams told me at one phase of the questioning if I didn't talk they would take me out in the
334 Everglades, dump me out there, and I never would come back.

Q. Do you remember any other?

A. I was told that at the end of the questioning when I was forced to sign a confession they had if I ever retracted it my wife and family wouldn't exactly be in good health and I was threatened if anything like that was retracted they would come back and they would really go to work on me.

Q. Were you subjected to any physical punishment?

A. Yes, sir.

Q. Describe that and by whom it was inflicted, if you can?

A. Well, the only person that I could see actually that inflicted any physical hurt to me was Williams, because he was standing in front of me most of the time.

Q. What did he do?

A. On Wednesday night—that is the night we are talking about now—he used a broom handle and a dowel, which he would poke into my solar plexus. There was a chunk of rope he would beat around my thighs and arms and shoulders with, and fists he used on numerous occasions.

Q. Where would he strike you with his fists?

A. Well, it would be alongside of the neck or in underneath the armpit, right in through—I don't know what muscle you would call that, but on the upper part of the
335 back, I suppose you would call it.

Q. What was the occasion or incentive for him doing that, if you can tell?

A. Well, when he first asked me about all of this business that was going on I told him I didn't know anything about it, if there was anything going on like that. He had mentioned to me an organization was stealing things, that I didn't have any knowledge of.

Q. Then what happened?

A. Well, with my denials he would proceed to hit me with these instruments and his hands and tell me that I had better tell him something that I had taken or somebody else had taken.

Q. You said, I believe, that it was approximately—Did you say five or five-thirty?

A. Five-thirty.

Q. Five-thirty?

A. Five-thirty.

Q. Approximately when you entered the shack. How long did you remain in there?

A. About two and a half hours. I think we got to my house—they brought me out to my house about eight o'clock.

Q. Were you in the shack continuously from five-thirty on until shortly before eight o'clock?

336 A. Yes, sir.

Q. How frequently or on how many occasions, as near as you can tell, were you struck either by the fists or by these various instruments which you have mentioned?

A. Well, about a time element, I couldn't exactly say, because after the first—maybe the first half hour or so, I was kind of dazed and unawares of how often it was being done. Well, they were questioning me at the rate of maybe three questions every ten minutes and each question was punctuated by some form of physical violence.

Q. You have stated that you ultimately signed some document confessing to something. What did that contain, as near as you can recall, if you can?

A. Well, I had purchased some lumber and materials I was using in making an extension on the house. I had bought some of it off Lindsley himself and some of it in other yards.

Q. Talk a little louder, please.

A. I say, some of it in other yards. I found Lindsley's wasn't good enough for what I wanted, and all of those things that I knew I had out there, and some of the things I had forgotten about, they put all down on a sheet. They had made me put down quite a bit of it. When they got out to my house they started to carry everything off and then they added that to the sheet and made me sign

337 a subsequent confession in ink.

Q. Do I understand you had some building materials at your house you had purchased at various places?

A. Yes, sir.

Q. What did that consist of?

A. Some lumber.

Q. What kind of lumber, if you remember?

A. Siding and timber, material, you know, for the erection of an upstairs, studs, flooring, siding and roofing.

Q. Was there put on this list you signed anything that you were supposed to have stolen other than that that was at your house? In other words, were there articles that were supposed to have gone to some other place?

A. Yes, I believe there was—no, outside of the fact what was on the list itself was all out at my place, but they did force me to tell them that there was people I had sold material to, a few contractors or something, they had the names of, that they put down in my confession, too.

Q. Let me pause here and ask you, was that statement true insofar as it reflected the supposed fact that you had stolen this stuff? Do you understand the question?

A. No, I don't; not exactly.

Q. As I understand it, the list was correct in that you had this material at your home?

A. That is right.

338 Q. Now, then, I asked if the statement contained in it that you had stolen it, if that statement was true?

A. No, sir.

Q. Had you stolen anything from the Lindsley Lumber Company?

A. No, I hadn't stolen anything from the Lindsley Lumber Company, but there was Mr. Riley, when we were unloading boxcars, had given me materials out of the boxcars that was used as dunnage. They claimed that that was also stolen.

Q. You mean braces and stuff in there to hold things in place?

A. Yes, sir.

Q. You had been given some of those?

A. Yes, sir.

Q. You took those to your house?

A. Yes, sir.

Q. Were you again called upon to visit this place on the night of the 28th?

A. Yes, sir.

Q. Will you state the circumstances under which you visited that paint shack on the night of the 28th of March, 1947?

A. Well, this car drove up in front of my house, and Williams came out on the front lawn and called to me from

339 out there. I didn't know just who it was at the time, but I went to the front door. He said, "Come on out." I told him I couldn't, I wasn't dressed." I mean, I had a robe on, but that was all. He came up to the front door, and I had the front door open. He reached in with his hand and put a pair of handcuffs on me, and he said, "I want you for grand larceny." Mr. Ford was standing in the driveway. There was somebody else out in the car, but who I couldn't see at that distance. When I told him I wanted to get some clothes on he marched me into my bedroom with a gun at my back, and he walked me back out to the car.

Q. Did you dress?

A. Yes, sir.

Q. Then what happened to you?

A. I was walked back out to the car. There was Chester Robinson and Bombaci in the car, besides Ford and Williams who escorted me out to the automobile.

Q. So, there were five of you that were ultimately in the car; is that correct?

A. That is right.

Q. Where did you go?

A. They brought us back down to the paint shack again.

Q. What happened to you when you got to the paint shack? Were you immediately taken into the room or not?

340 A. No, sir. I was handcuffed to the steering wheel.

Q. Do you know who was taken into the room, into the shack?

A. Well, there was a period of time, about ten or fifteen minutes, that both Robinson and I were handcuffed to two separate cars. Then they brought Purnell out and brought Robinson in.

Q. You saw Purnell come out of the paint shack?

A. That is right.

Q. Then Robinson was taken in?

A. Yes.

Q. How long did Robinson stay in the paint shack?

A. He was in there from, oh, about a quarter after eight until about a quarter after eleven or so.

Q. Where were you during that time?

A. Well, at first I was parked right outside of the door. Well, they kept—I wouldn't say they kept going in and out, but they went in and out of that door occasionally. I could hear noises.

Q. What kind of noises could you hear?

A. I could hear voices going on in side. I couldn't distinguish who they were, but I could hear somebody saying, "Well, you better tell me." There would be another voice saying, "Don't hit me any more. I will tell you what is going on." I couldn't see anything because there was a big—

341 I guess it was a partition in there.

Q. Then, you said, as I understood it, or you indicated that you did not occupy the same location outside during that entire period of two to three hours?

A. That is right.

Q. Where were you moved to?

A. Well, they moved me from the door because Williams said it was too close to the shed; I could hear and see too much. He moved me over against the wall of the main building.

Q. How far were you from the shed at first?

A. Two to three feet.

Q. How far were you when he moved you over to the wall of the main office building, did I understand you to say?

A. That is right.

Q. How far was that away from the shack?

A. I would say about fifteen feet.

Q. When you went over there could you still hear the same general nature of sounds?

A. No. I couldn't hears sounds too much, but I was placed in such a position that I could see shadows through a small window.

Q. What character of shadows did you observe?

A. Well, I couldn't see too much except for an arm
342 falling and raising and falling on, I would say—I guess it was a shoulder of somebody, because it was just—well, the form of a shoulder sticking up that you could see an arm raising and falling on.

Q. Was there an aperture or opening on—that would be the south wall of the paint shack?

A. Yes, sir; a small window there.

Q. That is what I mean. During this period of time was Robinson in the shack continuously?

A. Yes, sir.

Q. You have indicated that Robinson came out of the shack somewhere in the neighborhood of eleven o'clock. I will ask you if you know what was done with Robinson when he was taken out of the shack in the neighborhood of eleven o'clock, or a little after, perhaps?

A. Well, as far as I can say, he was brought to the car he was originally in and handcuffed back in that car, as I was being brought in.

Q. Then what happened to you?

A. As I say, I was brought inside.

Q. What happened to you when you were brought inside?

A. Well, I was questioned on the same things that were going on before, but maybe with just a slight difference in the nature of other members of the concern that could
343 steal material.

The Court: Other what?

The Witness: Other employees.

Q. (By Mr. Botts) You mean that they questioned you concerning other employees?

A. That is right.

Q. Were you subjected to any physical torture or abuse during that period?

A. Yes, sir.

Q. Was it any different in character from that which you have recounted heretofore?

A. Yes, sir. Instead of it being with the instruments on hand, they had brought their own implement this time.

Q. What was that implement?

A. Well, it was a length of solid rubber hose, I would say, about maybe twelve to, I would say, about fourteen to sixteen inches long. It felt like it was full of lead shot.

Q. Where did they strike you with that?

A. Well, they struck me around the back and upper arms; once in a while they would come down on the upper thighs.

Q. Was there any additional member of the group on this night of the 28th that was present?

344 A. Well, yes, sir, there was. I remember the other two. I believe it was the other two that showed up, Perry and—I am not sure of either night. Ford, I know, was there Friday night.

Q. Ford was there Friday night?

A. Yes, the 28th.

Q. Do you happen to know anything about the source from which this lead filled instrument that you have described—do you know where that came from? Did anybody make any claim to its ownership?

A. No, sir.

Q. You don't know anything about where that came from?

A. No, sir.

Q. How long did the session in the shack continue on the night of the 28th?

A. Well, from about—As I say, from about a quarter after eleven until around two-thirty sometime, because we were brought down—

Q. Did you say two-thirty?

A. Two-thirty, because we were brought down to the Police Station and booked at 2:45.

Q. Who took you down to the Police Station?

A. Well, in our car there was Williams, Ford, Giroux, Robinson and myself.

345 Q. What happened to you when you were in the Police Station?

A. Well, they booked me and brought me across the street and put me in jail.

Q. They booked you. I have a picture dated 3-28-47. I will ask you if that picture was taken of you down there?

A. Yes, sir; that was taken of me.

Mr. Botts: I offer it in evidence.

Mr. Roberts: No objection.

The Witness: The date on that, though, is the 29th, not the 28th.

Q. (By Mr. Botts) That was after midnight on the 28th, was it not?

A. Yes, sir.

(The picture was thereupon received in evidence and marked "Government's Exhibit No. 9.")

Q. (By Mr. Botts) Then, after you had been booked and your picture taken and fingerprinted what was done with you?

A. Well, I wasn't booked or fingerprinted that morning. When I was brought up there I was just booked and brought on over to jail, and later on in the morning, I should say when people to get up out of bed, they brought me back over
346 there to be fingerprinted.

Q. That is when you were fingerprinted and the picture taken?

A. Yes, sir.

Q. How long were you kept in jail?

A. Until Monday; that would be the 31st.

Q. By the way, when Williams announced he was arresting you for grand larceny was Ford present then?

A. He was out in the driveway.

Q. He was out in the driveway, how far from where you and Williams were?

A. About thirty feet.

Q. You say you were released on Monday afternoon?

A. Yes, sir.

Q. About what time, as near as you can recall?

A. I would say about two o'clock, I think.

Q. Well, it was in the afternoon?

A. Yes, sir.

Q. After you were released I will ask you if you had any photographs made?

A. Yes, sir.

Q. I will ask you if these are the photographs which you had made subsequent to your release (handing photographs to witness)?

A. Yes, sir; they are.

347 Q. On what day with reference to the day when you were released, or time when you were released, did you have the pictures taken? Was it that same day, a later day, or what?

A. It was the same day. That was just after we went over to see Captain Barker in the Police office, and went on back to the studio and had our pictures taken.

Mr. Botts: I offer the pictures in evidence.

Mr. Marsh: No objection.

(The two pictures were thereupon received in evidence and marked, respectively, "Government's Exhibits 10 and 11.")

The Court: We will take a five-minute recess at this time.

(A short recess was then taken.)

Q. (By Mr. Botts) I direct your attention to Government's Exhibit No. 11. On the front part of your upper arm, upper left arm, I will ask you if there are any indications on that photograph of any condition that existed on your arm?

A. Yes, sir.

Mr. Marsh: I object to that question on the ground that the photograph speaks for itself, and the question is leading.

348 The Court: Yes. I sustain the objection. Just let him tell, and let the pictures speak for themselves.

Mr. Botts: He has certainly a right to say if there are any bruises there. Whether those bruises were caused by this occurrence—I mean, it is undeniable that he has got a right to say—

The Court: What is the question? I would like to get on with the case.

Mr. Marsh: I have no objection to this witness testifying to what that photograph discloses, if it is something that the photograph can't show, but I object to counsel leading the witness and in his arguments to the Court suggesting to the witness what he should say about certain marks on the photograph.

The Court: Read the question.

(The last question was thereupon read by the reporter.)

The Court: I will reverse that. I overrule the objection. Let him answer.

The Witness: Yes, sir. The whole muscle in the left arm was bruised.

Q. (By Mr. Botts) Were there discolorations on it?

A. Yes, sir.

Q. Now, then, I notice on the rear part of your right

349 arm up toward the shoulder some marks that are clearly indicated on the photograph. I will ask you if those marks were the result of the occurrence which you have described?

Mr. Marsh: I object to that question on the same ground, that it is leading, and move that the question be stricken from the record. It is testimony of the District Attorney and not of the witness.

The Court: Read the question.

(The pending question was thereupon read by the reporter.)

The Court: I overrule the objection, and deny the motion to strike.

Q. (By Mr. Botts) Did you answer that question?

A. Yes, sir; those are marks that were made on me from the beatings.

Q. Did you have a shirt on when you were beaten?

A. Yes, sir.

Q. What kind of a shirt? I mean, was it a heavy shirt, or light weight?

A. It was a heavy flannel shirt.

Q. Are you married?

A. Yes, sir.

Q. Were you married at that time?

A. Yes, sir.

350 Q. I will ask you whether or not the condition of your body was visible to any person?

A. Yes, sir. My wife seen it. She says it was a little worse—

The Court: Don't say what your wife said.

Q. (By Mr. Botts) Wait. Don't say what she said. Did you show it to your wife?

A. Yes, sir.

Mr. Botts: That is all.

CROSS EXAMINATION

Q. (By Mr. Marsh) Did you know Mr. Ford on the 26th of March, 1947?

A. Not that I know of.

Q. Did you know him on the 27th of March, 1947?

A. I still wouldn't know.

Q. You don't know whether you knew him or not?

A. That is right.

Q. Do you mean to tell me, or tell this jury that you don't know whether you would know a person or not at a certain time?

A. I know a man by looking at him. I don't know his name unless I am introduced to him.

Q. Had you ever been introduced to Sergeant Ford?

A. No, sir.

Q. Had you ever seen him before the 26th of March, 1947, that you know of?

351 A. No, sir.

Q. Where you aware of the name Sergeant Ford or Roy Ford or Charles R. Ford at that time? Did you know anybody by that name?

Mr. Botts: I don't know the purpose of this question. This witness has testified Mr. Ford was not there on the 26th. I don't know whether it is intended to quote this witness as

saying he was there on the 26th, because that he has denied. I object to it on that ground.

Mr. Marsh: I don't know that the witness did deny it.

The Court: I overrule the objection. He may answer.

The Witness: No, I didn't.

Q. (By Mr. Marsh) Then, can you safely say that you did not know Roy Ford or Charles R. Ford or Sergeant Ford on the 26th of March, 1947?

A. That is right.

Q. Is the same true of the 27th of March, 1947?

A. I would say so.

Q. Is it true or not, please, sir?

A. As I said before, I don't know a man's name. I can recognize his face.

Q. Did you know anybody of the appearance of Sergeant Ford on the 27th of March?

A. I don't believe I did.

Q. Did you know anybody of that name, description or appearance on the 28th day of March, 1947?

352 A. Yes, sir.

Q. When did you first see the person that you say is Sergeant Ford?

A. About eight o'clock in the evening of the 28th.

Q. When did you first find out the name of that person?

A. Early in the morning of the 29th.

Q. How did you find out that name?

A. He had signed that slip that they make out in the Police Station.

Q. Did you see him sign it?

A. Yes, sir.

Q. You saw him sign the slip?

A. I believe so.

Q. What time was that?

A. About two in the morning, I believe.

Q. That was the first time you had known this person by name; is that right?

A. Yes, sir.

Q. When did you next see him?

A. Offhand, I would say I never seen him again, except when they first started this case.

Q. You mean at the previous trial of this case?

A. The previous trial.

353 Q. On the night of the 28th when this car came up to your door, as you say, where did you first see Sergeant Ford?

A. Out on the front lawn.

Q. How far from the car was he?

A. Possibly about twenty feet.
Q. From the car?
A. From the car.
Q. How far was he from your front door?
A. About thirty feet.
Q. Do you remember giving a deposition in the office of Cushman & Woodard on, I believe, the 12th of November, 1948, a deposition in the case of John P. Sturniolo, Jr., versus Dania Supply Company?
A. I don't remember the exact date. I remember testifying.
Q. You remember giving that deposition. Do you recall the testimony you gave on that occasion?
A. Not all of it.
Q. You recall the general testimony that you gave?
A. That is right.
Q. Were the facts in your mind concerning the events of the 28th of March clearer at that time than they are now, bearing in mind that was in November, 1948, and this is April, 1949?
354 A. I would say it would be about the same.
Q. I will read the testimony that you gave at that time, as reported, and ask you to listen to this: "When did you next—"
Mr. Botts: That is not the proper way to lay the ground for impeachment.
The Court: Yes; that is correct. I will sustain the objection. Ask him if he was asked specific questions and didn't give certain answers.
Mr. Marsh: Very well.
Q. I will read this question and ask you if you gave an answer to this: "When did you next see any of the men I have named?" Those are the men named in this present case.
Mr. Botts: That is not proper.
Mr. Marsh: All right. I withdraw the question.
The Court: Yes; that is correct.
Q. (By Mr. Marsh) The question was asked you concerning the people you saw at eight o'clock on the night of March 28th.
Mr. Botts: That is improper.
The Court: I sustain the objection.
Mr. Marsh: I will withdraw it if Mr. Botts wants me to read the whole record.
Mr. Botts: I don't want you to do anything. I
355 just want you to do what you do properly.
Q. (By Mr. Marsh) I will ask you if you were asked this question, "Who did you see?" and if you answered, "I

saw Williams, Bombaci, Giroux, Ford, Yuhas and Chester Robinson. Question: All at your house? Answer: Yes, sir. Question: What happened there at that time? Tell me, please, sir. Answer: Somebody called out from the outside. I went out to see who it was, and when I opened the door, it was Williams, and he said he was going to arrest me for grand larceny, and he reached in and put handcuffs on me through the open door. He said I had better go quietly if I valued my life. With that, he started to haul me out to the car. I didn't have any shoes on, or shirt, and nothing on except a pair of pants. I told him I would like to put some clothes on. He drew a gun and put it at my back and let me put my clothes on in the bedroom." Did you say that?

A. I believe I did, sir.

Q. Then, were you asked: "You said that Williams came to the door and said he was going to arrest you. Who was with Mr. Williams at that time? Answer: I think Mr. Ford was standing in the driveway. Question: Do you know, or not? Answer: I don't know. It was dark out there, but I did see him in the car, later." Do you recall that?

356 A. Yes, sir.

Q. Is it your testimony now that you knew he was in the driveway, or is it your testimony now that you did not know whether he was there or not, the same as you testified previously?

A. Well, that would be hard to say, because the fact remains that after milling it over in my mind there was two people that got in the front seat; that was Williams and Ford, while the other man remained in the back with Robinson. You think about something long enough I suppose it does clear itself up.

Mr. Marsh: No further questions.

Q. (By Mr. Boardman) After the facts and incidents occurred on March 26th in the evening, where did you go?

A. I was taken to my home.

Q. Taken to your home. You remained there that night?

A. Yes, sir.

Q. Was that a Wednesday?

A. Yes, sir.

Q. On the next day, which was Thursday, March 26th, 1947—

Mr. Botts: The 27th, I think. You said Wednesday was the 26th.

Q. (By Mr. Boardman) Thursday, the 27th of March,

357 of the year 1947, did you see Mr. Giroux?

A. Not that I know of.

Q. Refreshing your memory, on or about this date, did you drive Mr. Giroux to your home in your automobile?

A. On Thursday?

Q. On or about this date, Wednesday or Thursday.

A. Wednesday night I believe I did; not Thursday.

Q. Did you then at that time point out to Mr. Giroux certain articles that you advised him belonged to the Lindsley Lumber Company?

A. That is right.

Q. Did Mr. Giroux at your request pick up those articles?

A. Not at my request.

Q. You pointed the articles out to him, didn't you?

A. That is right.

Q. Were those articles picked up in your presence?

A. Yes, sir.

Q. Were they taken off your property?

A. Yes, sir.

Q. You haven't seen them since?

A. No, sir.

Q. I believe on March 28th, which is a Friday, you
358 testified about certain matters and things occurring again; is that true?

A. Yes, sir.

Q. All during the day of Thursday, March 27th, where were you?

A. Most of the time I was at home.

Q. Did you report the facts and circumstances which you now tell the jury occurred on March 26th, Wednesday, to anyone?

A. I believe I did. I think I told it to a former employee of Lindsley Lumber Company.

Q. That was on Thursday, March 27th?

A. Yes, sir.

Q. Did you work for Lindsley Lumber Company on that date?

A. That would be hard to say, because they told me I need not come in any more, but, yet, I still had my pay coming. I mean, it would be a technical way of saying whether I was still working for them or not.

Q. Did you or did you not report the facts and circumstances about which you testified on Wednesday, March 26th, 1947, to the police?

A. No, sir.

Mr. Boardman: No further questions.

Mr. Roberts: No further questions.

359 Mr. Botts: Is that all from everybody? You may come down.

(Witness excused)

MRS. DOROTHY STURNIOLO

was thereupon called as a witness on behalf of the Government, and having been first duly sworn, testified as follows:

DIRECT EXAMINATION

Q. (By Mr. Botts) State your name.
A. Mrs. Dorothy Sturniolo.
Q. Are you the wife of Mr. John P. Sturniolo?
A. Yes, sir.
Q. Mrs. Sturniolo, do you remember an occasion when your husband was confined to jail in March, of 1947?
A. Yes, sir.
Q. After he was released did you have occasion to examine his body with respect to the existence of bruises, wounds or contusions of any character?
A. I saw him in jail. I saw a lot of bruises then.
Q. When was that?
A. That was Saturday.
Q. That was Saturday?
A. Yes, sir.
360 Q. What were the character of those wounds that you observed?
A. Well, he was all black and blue on the upper arms and his back.
Q. I direct your attention to Government's Exhibits 10 and 11, and I will ask you to examine those and then state whether or not when you examined him on Saturday, which would be March 29th, there were bruises, wounds or contusions visible on his body other than those which appear upon the photographs?
Mr. Marsh: I object to that question as leading.
The Court: Read the question.

(The pending question was thereupon read by the reporter.)

The Court: That was the 29th, wasn't it?
Mr. Botts: Saturday was the 29th. That was the day the lady said she saw him in jail.
The Court: I overrule the objection.
The Witness: Yes. Those photographs don't show how badly he was bruised.
Q. (By Mr. Botts) Will you describe the bruises and wounds which were on his body, without reference to whether or not they appear in the pictures?
Mr. Marsh: I object to that on the ground that it is irrelevant and immaterial, the same objection I have made to
361 all of this type of testimony, irrelevant to this conspiracy.

The Court: The objection is overruled. Gentlemen of the Jury, the defendants are not being tried now for substantive offenses, or a beating. This testimony is only to be considered by you in connection with the charge, which is a conspiracy in four counts.

The Witness: Well, he was all black and blue from here up on each arm, (indicating), and on the back.

Q. (By Mr. Botts) When you said "from here up", will you indicate what portion of your arm you referred to? In other words, when you say "from here up" the Court Reporter can't—that doesn't mean anything when you read it. If you will, describe a little more definitely the portions of his arm which you mean to indicate bore bruise marks.

A. Well, across the back, across from shoulder to shoulder, and the other arm was the same way.

Mr. Botts: You may examine.

Mr. Marsh: No questions.

Mr. Botts: Come down.

(Witness excused)

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362 HENRY B. GIROUX

was thereupon called as a witness on behalf of the Government, and having been first duly sworn, testified as follows:

DIRECT EXAMINATION

Q. (By Mr. Botts) State your name, please.

A. Henry B. Giroux.

Q. Where do you live?

A. Jacksonville, Florida.

Q. In what work or employment are you now engaged, if any?

A. I am going to school. I am studying to be a watchmaker.

Q. I will ask you how you were employed in the month of March, of 1947?

A. I was with the Continental Detective Bureau.

Q. Who was the head or controlling manager of that company?

A. Chief Williams.

Q. Is that the defendant, Jay G. Williams?

A. Yes, sir.

Q. Did you at that time know Mr. John S. Bombaci?

A. Oh, yes; he was employed also.

Q. He was employed in a status somewhat similar to yours, was he?

363 A. That is right.

Q. Do you know Mr. Joseph V. Perry?

A. Lieutenant Perry was his title.

Q. He was a superior officer in the same organization; is that right?

A. Yes, sir. He was the Chief's assistant.

Q. Now, in the month of March did you know anything about Mr. Williams' Continental Detective Bureau being employed by the Lindsley Lumber Company?

A. Oh, yes; I knew that.

Q. Were you one of the operatives that were engaged in that work for the Lindsley Lumber Company?

A. Yes, sir, I was.

Q. What kind of work did you do? Just what was your function in that investigation?

A. Well, I was supposed to be in the yard and work with the workers and if I seen anything that wasn't as it should be I should report it. I was working in the Hollywood yard for a while. I got transferred from that yard to the Buena Vista yard over here in North Miami. It was all prearranged.

Q. Do I understand you, you were posing as an employee of the company?

A. That is right.

Q. What kind of work did you do? Did you perform
364 work?

A. I would say I did, unloading carloads of cement and everything else. I worked like a dog. I worked mighty hard.

Q. Your function as an employee was, then, not entirely to pose; you actually worked; is that right?

A. I should say I did. I left the house at six o'clock in the morning. When I got through work—I worked ten hours a day—I come back up in the office and I had to make out a report. When I got done with the report then the Chief would look it over. If it satisfied him, all right, and if it didn't I had to write another one then. Some nights I didn't get home until nine o'clock at night.

Q. Did you ever work out at the 17th Avenue yard?

A. No, sir; I never worked out of that yard, but I had an occasion to go there once in a while.

Q. On or about the 26th day of March were you there?

A. I am not too familiar about dates, but I was in and out of that yard.

Q. Do you know John P. Sturniolo?

A. Yes, sir, I do.

Q. Do you know Henry W. Priest?

A. Yes, sir, I do.

Q. Do you know Chester S. Robinson?

A. Yes, sir, I do.

365 Q. Do you know Frank J. Purnell?

A. Yes, sir.

Q. Were you present in the socalled paint shack at the 17th Avenue place of business on the 27th when Mr. Priest was in there?

A. Well, the date I am a little confused about, but I was there when all the men were beat, the men you named.

Q. Let's take the case of Mr. Priest on the 27th of March, 1947. Were you present when he was in the paint shack?

A. Yes, sir.

Q. Your best recollection as to when the operation involving Mr. Priest started on that day, was it before night or after night when you were first present with Mr. Priest?

A. Well, he was beaten twice, you know.

Q. Yes.

A. Once after they got through with him in there they took him out and handcuffed him to the car.

Q. The first time, when did that first start, as near as you can recall, with reference we will say before or after noon, in relation to the noon hour?

A. It was after lunch time, because we didn't get out there until after lunch.

Q. Will you state what you did in the process that went on in that shack?

366 A. Well, I was clerk. I kept track of the notes and stuff. Whatever they wanted me to put down I put down.

Q. Was there a table in there?

A. There was a little one hanging there, but the Chief knocked that off with that shillelagh. When he knocked that down we put that in the other room.

Q. Was that a table or desk?

A. It was kind of hanging from hinges. You could fold it up if you wanted to, but it was lying down.

Q. Did you use that for a table for use in making your notes?

A. No. I sat at the side. Like they sat here (indicating), this is in front (indicating). Over at the side is where I sat, on a high stool.

Q. Did you have a table or anything to write on?

A. It was a little—I wouldn't say it was a table; it was part of the partition there.

Q. You made notes. Now, then, take up the matter of Mr. Priest. I will ask you to describe what you saw transpire, if anything, with reference to Mr. Priest.

A. Well, they brought him in there.

Mr. Marsh: I am going to object unless it is shown who was there.

Mr. Botts: We will show that as we go along.

Mr. Marsh: I don't know whether to make my ob-
367 jection now, Mr. Botts, or not.

Mr. Botts: For your information, I will state that it is not contended that Mr. Ford was there utnil later. At this particular time it is not contended that he was present.

Mr. Marsh: In that case, with that statement of counsel, I will object to any testimony insofar as the Defendant Ford is concerned, any testimony of this witness as to what transpired, on the ground that no predicate has been laid for such testimony in his case.

The Court: Well, that objection is overruled. In that connection, Gentlemen, what was said or what transpired in the absence of one defendant is not binding on that defendant unless he is a member of the conspiracy, and this is a conspiracy trial. It is not one where the defendants are being charged with a substantive offense, but this is a conspiracy trial, and any testimony as to what was done or what was said by one outside of the presence of any person who was not there is not binding on that person unless he was a member of the conspiracy at the time.

Mr. Botts: If the Court please, I must ask your Honor to correct that statement, because the law is that if there was a conspiracy and a person later joined that conspiracy he is responsible for anything that took place, even prior to his joining.

The Court: I think that is correct. That is a correct
368 statement of the law, so I amend that statement to you, Gentlemen, in regard to him being a member of the conspiracy. That will be fully covered at the time general instructions are given you at the end of the case. The law is as Mr. Botts stated there in regard to a conspiracy. If a person joins a conspiracy, why, then, he adopts what is the object of that conspiracy and becomes a member of the conspiracy. Now, one counsel suggests that I advise you as to what substantive means as distinguished from the conspiracy. I will not undertake to go into that in detail right now, but suffice it to say at this time the substantive offense would be the beating, but you are not trying these defendants for the beating, and that testimony is relevant only to the question as to whether there was or was not a conspiracy, of which they are charged.

Mr. Marsh: In view of Mr. Bott's request, which the Court just granted, would the Court also make it clear to the jury that in overruling my objection the Court does not indicate by that ruling one way or the other, so far as my client is con-

cerned, in connection with this conspiracy, that Mr. Ford was or was not a member of that conspiracy.

The Court: That is correct. By so ruling I have not indicated Mr. Ford was or was not present or whether there was or was not any connection on his part with the conspiracy.

But the objection is overruled. The witness may go
369 on and answer the question. Whatever he says in regard to what was done or what was said in answer to the question would be binding on any members of the conspiracy but not on any particular defendant unless he was a member of the conspiracy.

Mr. Botts: Read the last question.

Q. Go ahead and tell what happened to Mr. Priest.

A. Well, they brought him in there. They started questioning him, Chief Williams. He said he didn't know anything. Whenever he would say that he would knock him off the stool and tell him to get up. There was a light; he had to look up at this light all the time. At times Mr. Priest would say, "Well, it is hurting my eyes; it is blinding me." He would say, "Look up there, anyway." Of course, he used a couple of words; I daren't say those.

Q. Say it.

A. It was cursing.

Q. Go ahead. We are not children.

A. Williams said, "You old son-of-a-bitch, you are going to tell us the truth; if we have to keep you here until midnight we are going to find out the truth." He kept using those terms all the time. He knocked him off the stool, picked him up and knocked him off again, and made him get up. It went on so many times—I don't know how many. When they got all through with him there they took him out and hand-
370 cuffed him to the car. At that time I was present and Mr. Yuhas was present at all times, and Lieutenant Perry was present and Chief Williams.

Q. Was Mr.—

A. But they brought him in again.

Q. I understand that. I will ask you—I don't want to suggest any name to you. You have stated that Williams was present, that Yuhas was present, and I believe you said Mr. Perry was present, did you not?

A. That is right.

Q. Was there any other person present there during this first period of interrogation and, as you characterized it, abuse?

A. No, sir, not during the first beating.

Q. How long was Mr. Priest kept in there that time, or about what time was he taken out, I will put it?

A. He was in there a matter of hours; I wouldn't know exactly. I didn't have a watch or nothing, but it was a long time.

Q. You say he was taken out. What was done with him when he was taken out?

A. Well, he was handcuffed to the car stearing wheel. I didn't handcuff him, but as I went to lunch later on with Mr. Bombaci we seen him handcuffed in the car.

Q. When did Mr. Bombaci come in?

371 A. I don't recall the exact time he came in, but he come in and it was about that time that they decided to hold off for a while, because they wanted to wait until Mr. Ford got there, because he was bringing a shillelagh; they really wanted to work him over. They also wanted Mr. Ford there to make sure there wouldn't be any squawks. Naturally, they had to wait until he got there. He was there earlier and he left and come back, but he didn't go in the shack. Bombaci come, and Bombaci—

Q. You say Mr. Ford was there earlier in the day but didn't go inside of the shack?

A. That is right.

Q. All right.

A. He didn't go inside of the shack. He said he would be back later. He was told to bring this shillelagh with him.

Q. Who told him to bring the shillelagh with him?

A. Williams; Chief Williams.

Q. Do you know—Go ahead.

A. Well, you still want Mr. Priest?

Q. Yes. Go ahead.

A. They brought him back in the second time, and Bombaci got hold of a stick. He had a stick about

372 that long (indicating). It is a piece of doweling. He kept hitting him and poking him and cussing. Bombaci called him a dirty bastard, old son-of-a-bitch and everything else. The Chief went on like that. The Chief looked him right in the face and said, "You are a dirty bastard. What do you want to do about it?" They kept on doing that. They kept knocking him down, picking him up, knocking him down and picking him up, and making him look into the light. They just went on until finally they figured he had enough, and Detective Ford called Williams over and said, "I think the old bastard has told about all he is going to tell. Why don't you knock off? We will probably have a big day tomorrow." That was the conclusion of his beating.

Q. How long was Detective Ford there during that last series of beating, your best recollection?

A. It was a matter of hours. I don't recall. It was away late in the morning.

Q. Did Officer Ford produce any instrument that was used in connecting with this beating, the latter part of it?

A. Oh, yes; he brought the shillelagh.

Q. What do you refer to as the shillelagh?

A. Well, it is about that long (indicating). It is cov-
373 ered with leather. It has got a big seam along the edge of it.

Q. I have an 18-inch ruler. Will you indicate as best you can the length of that instrument? Can you measure it with your hands?

A. I would say that it was about eleven inches long.

Q. Was it the same thickness throughout its length or not?

A. Yes, sir, it was. It was round, but it had a big leather seam. The reason I remember that so well is because Chief Williams told Ford, he says, "This is really a dandy; you could half kill a man; just so you don't hit him with the seam." Ford says, "Yes, it is real handy, but if you hit him with the seam it will leave a mark, so be careful."

Q. About what hour, as near as you can tell, how late at night did the second session during at least a portion of which Officer Ford, we will say, was there, how long did that continue, to what hour?

A. That lasted until after midnight, because all the busses and everything stopped running. I didn't have a car and they had to take me home.

Q. Do you know what happened to Williams that night?

A. What happened to Williams?

374 Q. I don't mean Williams. I mean Priest. In other words, do you know whether he was arrested or not?

A. Oh, yes. Detective Ford—He objected to this here questioning quite a few times to Detective Ford. He says, "If I am going to be under arrest, put me under arrest." Detective Ford showed him his badge and says, "You are under arrest." Of course, he done that to all prisoners. When they started to objecting to the beating he would show them his badge. They had no authority to do that, but he did. That is the reason he was there, to see that everything was legal.

Q. Did you accompany him down to the police station that night?

A. Mr. Priest?

Q. Yes.

A. Yes, sir, because we went over to Captain Barker, or one of the men in Captain Barker's office. We went in there, and we were talking to him. I remember that, because I sat

down on the stool. He said, "Sit there." There was no seat in there for me to sit down on. I just happened to sit on the stool; I was tired. They pressed the buzzer and I got up in a hurry. I remember that very well.

375 Q. The next day, which would be the 28th, I will ask you if you were out there at the shack again on that day?

A. Yes, sir, I was.

Q. Do you know Mr. Frank J. Purnell?

A. Yes, sir, I do.

Q. I will ask you if you were present when he was inside the shack?

A. Yes, sir, I was.

Q. Do you know what happened to Mr. Purnell?

A. Yes, sir, I do.

Q. Will you indicate, please, what happened to him?

A. Well, when they first brought Mr. Purnell in there he was more or less bewildered. He wanted to know what he was over there for. They said, "We want to ask you a few questions." He said—

Q. I want to get back to Mr. Priest. Did Mr. Priest ultimately sign something in the nature of a confession?

A. Well, he had no choice.

Q. I mean, did he?

A. He signed his name.

Q. Did you write out the paper that he signed?

A. As they told me to write it down.

376 Q. I know. You were the clerk of the session?

A. That is right. They wanted that. And Detective Ford signed it also. They decided out there to do that to make it legal, to make it stick.

Q. Coming back to the next day with Mr. Purnell, your best recollection, about what time did Mr. Purnell—was he escorted to the meeting place in the shack?

A. Well, I recall—I don't recall the exact time, but I do recall he was in there. He was kept in there a long time. He was in there until long after he should have went home, because he said his wife and children would be worried about him, because he didn't let them know where he was or nothing.

Q. Did he start in there during daylight?

A. Yes, sir.

Q. Did he continue until after dark?

A. Oh, yes.

Q. To what treatment was he subjected while he was in there?

A. Well, they had the shillelagh then, and Williams beat him with that shillelagh. He would ask him a question. He says, "I am telling you the truth; I didn't." He would hit him with this shillelagh, ram him in the stomach with it, knock him off the bench or seat he was sitting on; he knocked
377 him off, and he called him a son-of-a-bitch, "You are a rat; we know you stole stuff," and all of that there.

Q. Who were present at that time?

A. Bombaci was there. He kept poking at him all the time and hitting him with this stick he had there. The Chief would beat the devil out of him.

Q. When you use the word "Chief", to whom are you referring?

A. Chief Williams. He beat him unmercifully. Besides that, Bombaci kept hitting him with this stick and all of that, poking him. He would say, "Come on, you dirty rat." He called him a bastard and everything else. It seemed like "Bastard" was his by-word, and he made him look up at the light all the time. Purnell practically pleaded for mercy; they didn't give him any.

Q. Who else was present?

A. Detective Ford was there, Bombaci, Lieutenant Perry, myself and Mr. Yuhas.

Q. At the time when Purnell left did you see Mr. Chester Robinson?

A. Robinson was brought in.

Q. He was brought in there—

A. I don't remember the exact time. He stayed there an awful long time.

Q. Do you remember whether Robinson was brought
378 in after night or in the daytime?

A. To the best of my recollection, it was night.

Q. What procedure took place while Mr. Robinson was in there?

A. Well, the same thing took effect, only Mr. Robinson, he said, "If you are going to place me under arrest," he said, "arrest me and take me and put me in jail, but don't beat me." He said, "If you are going to arrest me, arrest me." Detective Ford said, "You are under arrest right now, but we want to question you." So, Williams beat him until he says, "I think the guy likes it, and," he says, "he likes me, too. Don't you?" He hauled off and hit him with that shillelagh. Robinson just winced, it hurt him so. He says, "You do like me, don't you?" He hit him again. Robinson says, "Yes, I do, but please don't beat me any more, please," but that didn't have no effect on the Chief. He just beat him, anyway.

Q. Did you see anyone else strike Robinson other than the Chief?

A. Oh, just once, Bombaci—no; it was more than once. He had that stick, and he kept poking him and hitting him again. He was always in there with that stick. One time Robinson fell off the stool. Bombaci said, "Come on; get up,
379 get up; the Chief wants to question you. Get up there, you dirty bastard." He says, "Don't kick me. I just had an appendicitis operation." He kicked him again. Boy, he really winced. Robinson begged for mercy. They didn't give none there, because the sweat was rolling off Chief Williams' face. He said, "This guy is about to wear me out." He says, "He likes it." He told Bombaci to take over, but he come back and resumed it. The sweat was actually running off Chief Williams' face. He had beat him so much he was perspiring very heavily.

Q. Did you see Sturniolo there that same night?

A. Sturniolo was there twice. Sturniolo was there—

Q. On the 26th you have testified about?

A. Yes.

Q. I think you testified about Sturniolo being there on the 26th.

A. No, sir, I didn't.

Q. On the 28th was Sturniolo there?

A. Oh, yes. They went out and got him.

Q. To what treatment was he subjected on the 28th when he was there?

A. Well, I would say in the main he was beat up, and the Chief would take this shillelagh and ram it in his stom-
380 ach, hit him and slug him, hit him and slug him, knock him off the stool and make him look up in the light. It was so many times I can't remember.

Q. Was the treatment to which Mr. Sturniolo was subjected materially different from what the others were given, which you have described?

A. No. He was beat up just the same.

Q. Let's go back to the 26th. Were you present in that shack with Mr. Sturniolo on the 26th?

A. I don't remember the date. If that is the date Sturniolo was in there, I was in there, yes.

Q. Were all of the persons that you have named as being present on the 28th, were those same persons present on the 26th and, if not, indicate those who were and those who were not present on the 26th, as near as you can, if you can recall?

A. The first beating wasn't as severe as the second, and they let him go, you know. It was the second time they brought him back that everyone was there, Ford and Bombaci.

Q. Who was there the first time? That is what I am trying to get at, if you can recall.

A. I was there and Williams was there and Bombaci was there—Wait, now; I am getting messed up. I am not certain. I don't want to say, because—

Q. You mean you are not certain with reference
381 to Bombaci?

A. He was there at this particular time.

Q. Was there any representative of the Lindsley Lumber Company there?

A. Oh, yes; Mr. Yuhas was there all the time.

Q. You have stated you are certain that Yuhas was there, that Williams was there and that you were there. Now, are you certain whether anyone else was there?

A. Perry was there. As far as Bombaci and Detective Ford, I believe they were there, but I am not certain. They were there on the worst beating, which was the second time, of Sturniolo.

Q. I will ask you whether or not you ever discussed with Mr. Williams down at the office the employment and the connection of the Lindsley Lumber Company, why he was employed in that kind of thing?

Mr. Marsh: I object to that on the ground previously stated, unless it is shown my client was present during that conversation.

The Court: Overruled.

Q. (By Mr. Botts) Go ahead.

A. Well, we were hired by the Lindsley Lumber Company, by Rock Lindsley, whoever he is—I don't even know, but I heard enough about him—to find out who was
382 stealing and where it was going, if any, and Williams told me he had a job to do and we had to make our reports look juicy, because Rock liked them juicy; it was going to be a big account; it was going to be a lot of work; there was going to be a big bonus in it if Rock Lindsley liked it. That is the extent of our hiring. I knew it was the Lindsley Lumber, but it was this Mr. Rock Lindsley. Whoever he is I don't know.

Mr. Botts: You may examine.

CROSS EXAMINATION

Q. (By Mr. Roberts) In all of these transactions who was your employer? Who did you look to? Who hired you?

A. Chief Williams, but I got pay checks for my work out there at the Lindsley Lumber, and then in addition I was supposed to get fifty dollars a week. I only made forty-two or

forty-three. Even working all day Saturday and time and a half I would get that check. I was supposed to go up to Williams. I would take the check up there to him and show him exactly how much I made, and then he would write out a check for fifty dollars, have me endorse it, and give me two or three dollars, or whatever the difference was between that and the fifty dollars; it made it look like he was giving me fifty dollars out of his pocket, but he wasn't.

383 Q. You at no time talked with any representative of the Lindsley Lumber Company about your position out there or your job out there; it was the Chief that gave you the orders as to where to go to work and what to do; is that correct?

A. Well, no.

Q. When you got on the job, I realize—

A. You mean for hiring and working for the company?

Q. That is right.

A. I thought you meant during the questioning.

Q. No, sir. I am talking about hiring and going to work out there—

A. That was through Chief Williams.

Q. —as an undercover man.

A. That is right.

Q. That was Chief Williams?

A. Yes, sir.

Q. Would you say you were working for Chief Williams in everything you did out there?

A. Yes, sir, I would say so.

Q. You would make a report to Chief Williams, not to anybody else, at the end of the day?

A. Well, I couldn't, because no one knew about it but Rock Lindsley. All the reports had to go to him

384 personally.

Q. You made the reports to the Chief. He then typewrote them, or something; is that right?

A. That is right.

Q. You made daily reports?

A. That is right.

Q. That is, after you finished your work, then you would go up to the office and write it in longhand, would you?

A. Well, I made notes all during the day.

Q. They were turned in to Chief Williams' office and from there on were typewritten, and you assume turned in to the Lindsley Lumber Company?

A. I don't assume. I know. I knew who got them.

Q. In the questioning that was being done out there among the different men, Priest, Robinson, Sturniolo and Purnell, who was in charge of that questioning?

A. Out where?

Q. Who was in charge of the questioning of these various men in that paint shed or house?

A. Well, it was kind of a funny mix-up. Detective Ford was there to see that everything was legal. Mr. Yuhas
385 was there to see—I don't know what he was there for. He was there. We couldn't do nothing without his approval.

Q. Were you there?

A. Oh, yes; I was there.

Q. Do you recall any statements that Mr. Yuhas made to you at the time about beating these men?

A. Oh, yes. I recall a statement that he made, but I didn't tell it all.

Q. What statement did he make to you, if you recall?

A. Well, while they were beating, especially on Purnell—not Purnell, but Robinson, Mr. Yuhas says, when Williams and Ford was standing there, he says, "Good God! Don't—" I forget his exact words. He says, "Is all of that necessary?" He said—Ford said, "Some of these nuts are tough to crack." Williams says, "Well," he says, "that is the only kind of language some of these guys understand. We have got to do that to get the information." He says, "You want the information, don't you, Mr. Yuhas?" Mr. Yuhas says, "Yes. Go ahead; I just wanted to know."

Q. At the last trial you didn't say anything about Mr. Yuhas saying "Go ahead", did you?

A. I was stopped, that is all. I said, "In my own heart, I don't believe anyone would like it." He looked kind of
386 funny about it. Of course, he didn't say anything.

Q. Mr. Yuhas looked kind of funny about it; is that what you mean?

A. Yes, but he continued questioning all of the employees just the same.

Q. To refresh your memory, do you recall at the time of the last trial that you said all Mr. Yuhas did was to turn to you and ask you, he says, "Is it necessary to do this beating?" Do you remember that?

A. Oh, yes. That may not be the exact words. As he got behind the stand, I walked right around behind him, and he said that to me also. I was standing beside Mr. Yuhas. We were over here and the beating was taking place over here

(indicating). I spoke to Mr. Yuhas a couple of times over there, and during that conversation, yes, he did say that.

Q. Not only did he say it to Mr. Ford and Mr. Williams, but he made that remark to you; is that correct?

A. Oh, yes. I don't know whether he just didn't understand it or not, but he just asked the question as a normal question.

Q. Do you remember making any statement at the last trial about what Mr. Yuhas' capacity was there, to the effect that Mr. Yuhas only wanted to know where the lumber was and recover as much as possible and give the
387 man who stole it time to pay for what was not recovered?

A. Yes, I made that statement. If you have it down it is true. I recall the statement. I recall wording similar to that. When Mr. Yuhas would go in front of these men he would say, "Now, we want to know everything you took, so we can have a list of it. I want you to itemize exactly what you did take, so I can estimate or assess the cost, and we will let you pay for it, if you tell us everything that you took." That is the extent of Mr. Yuhas' questioning. He wanted to know exactly what they took and what kind it was, the kind of lumber, and how much of it, and where they took it, and so forth, and where it was at the present time, went into detail like that.

Q. Mr. Yuhas at no time struck anybody or laid his hand on anybody?

A. No, sir. There wasn't room enough in there for him, anyway. Williams was the one who had all the floor.

Mr. Roberts: No further questions.

Q. (By Mr. Marsh) What time do you say it was that Mr. Ford came to the place on the 27th of March, 1947?

A. I didn't say. It was during the second beating of Mr. Priest.

Q. I say, what time do you say it was?

388 A. I don't remember the exact time, sir. It was after dark.

Q. About what time was it?

A. Well, it would have to be quite some time after six o'clock, because I went across the street with Bombaci and had a sandwich.

Q. What time did you get back from there, do you recall?

A. Well, we were over there—Chief Williams says, "Don't take very long," so we didn't take very long. Well, now, I didn't pay particular attention to the time.

Q. Were you there an hour?

A. Sir?

Q. Were you there an hour?

A. No, we were not there an hour, but Ford didn't come in until after that.

Q. About what time would that be? Sometime after six, you say?

A. I didn't say exactly sometime after six. I said it would be.

Q. Well, was it?

A. It was late. I know that. I don't remember the exact time.

Q. Give us, to the best of your recollection, what time it was.

389 A. As I said, I was in the shack. I remember going out at six. So many things transpired in there, and I didn't have a clock or watch, I wasn't sure of the time. If I was, I would be glad to tell you, but I don't recall the exact time.

Q. Did Mr. Priest go out during that day? Did he go out of the shack during the time he was there?

A. The first time Mr. Priest was brought in beat up, and then he was taken out and handcuffed.

Q. Was Mr. Ford there at that time, or any time during the day?

A. He was not there at that time.

Q. About what time was it that Mr. Priest was taken out?

A. It was pretty close to dark; as a matter of fact, it was just about dark.

Q. Had you had your supper yet at that time?

A. No.

Q. Did you eat while he was out or after he came back in?

A. While he was out.

Q. Had you finished when he was brought back in?

A. Oh, yes; we were back over there quite some time.

Q. What time was he brought back into the shack?

390 A. I don't remember, the same as I told you before, because Mr. Ford arrived there just before they brought him back in there. Purnell, he come—

Q. Just a minute. You say Ford came just before they brought him back in there?

A. Yes.

Q. He was only taken out once; is that correct, and then brought back later on?

A. That is right.

Q. Mr. Ford arrived just before?

A. He was there once before that; he left, and this is the second time.

Q. He didn't go in the shack the first time?

A. Oh, no.

Q. I am talking about when he went in the shack.

A. That is what I am talking about.

Q. He went in there while Mr. Priest was out, is that correct, before Mr. Priest was brought back in the second time?

A. He was there conversing for a while. That is the reason I am trying to say to you I don't remember, because I was ordered to stay in there at all times. What transpired outside I don't remember.

Q. I am asking you about when he came inside.

A. That is right. When he was actually beaten the second time Detective Ford was there, because Detective Ford
391 placed him under arrest.

Q. Mr. Ford came in just before Mr. Priest came in. I believe you said that. Is that correct?

A. He was there before Priest was brought in.

Q. Before he was brought back?

A. Yes, sir.

Mr. Marsh: That is all.

Q. (By Mr. Dressler) Has anyone made any promise of any immunity to you for turning State's evidence?

A. Any what?

Q. Has anyone promised you any reward or immunity?

A. Reward? It has cost me over a thousand dollars so far in this case.

Q. Answer the question.

A. Now, I will just state that to that extent I had some immunity or something, or I sure wouldn't be that far in debt.

Mr. Botts: I suggest you tell the witness he can answer that "yes" or "no".

Q. (By Mr. Dressler) (You can answer that either "yes" or "no".

A. No.

Q. You are the same Henry B. Giroux—

Mr. Botts: If the Court please, I know what is com-
392 ing. I am going to ask the jury go out. I know it is coming, and I know it is improper. I am going to ask the jury to retire, your Honor, before this next question is asked. I just know what is coming. I just know it is improper, so I just don't want anything to happen in the presence of the jury that will be improper.

Mr. Dressler: You mean to say it is improper to show he plead guilty?

Mr. Botts: You know it is, and I know it is.

The Court: Let the jury retire.

Mr. Botts: Now you have said that in the presence of the jury, just what I was trying to stop you from.

The Court: Let the jury retire.

(The jury then retired from the courtroom.)

Mr. Dressler: I think I am within my rights to ask the man if he has been convicted of a particular crime.

Mr. Botts: This Court has ruled time and again that they can ask him if he has been convicted of a felony. This offense to which he plead guilty was a misdemeanor and not a felony. Under the rule that I have been working under here for nine years the question as to whether or not he has ever been convicted of a misdemeanor is not admissible. He has not been convicted of a felony; the offense to which he plead guilty was a misdemeanor. If your Honor is going to change
393 your rule that has been in effect here for nine years that is all right, but I am just going according to the rule that your Honor has established and I have been abiding by for nine years.

Mr. Dressler: In order that I may get this into the record—

The Court: Before I hear the argument I will take just a few minutes' recess.

(A short recess was then taken, after which the following proceedings were had without the presence of the jury:)

Mr. Botts: I don't believe that any of this is actually material. The only possible materiality would be so far as it affects the credibility of this particular witness, the weight to be given to his testimony. I am willing, though I don't really believe it is admissible, that they ask him this question, in substance, "In connection with the matters concerning which you have testified was a charge filed against you of violation of Section 52 of Title 18, and did you plead guilty to that charge," and let him say "Yes". I am unwilling, because I think it would open an entirely collateral issue, to open up the scope of this other trial. I am willing for that much to go in. The question of what punishment he has received, if any, I think would be utterly improper, or anything of that
394 kind, unless he was offered some inducement to testify, which he has already said he wasn't. Now, that much, in other words, that he has entered a plea of guilty to the violation of Title 18, Section 52, I am willing for a question to be asked eliciting that much. The Court knows that the sentence that was imposed by Judge Barksdale had no— there was no promise on our part; there couldn't be, and, therefore, this Court knows that this man is correct when he states no promises were made to him.

The Court: Has he been sentenced by Judge Barksdale?

Mr. Botts: Yes, he has.

Mr. Roberts: And the sentence suspended.

Mr. Botts: The sentence was suspended; he was put on probation. He is on probation now. For example, if he should come up here and perjure himself in this case it would be grounds for revocation of that probation. So he has every incentive in the world to tell the truth at this time.

Mr. Dressler: In connection with Mr. Botts' statement, we proffer to prove by the record in Case No. 7240-M-Criminal, being a case in this court of the United States of America against Jay G. Williams, Perry, Giroux, Bombaci, Ford and Yuhas, that—

The Court: That was a charge under Section 52, now?

395 Mr. Dressler: They are both misdemeanor and felony charges, Title 18 USC, under Sections 51 and 52, in which Giroux was plead guilty.

The Court: That was Case No. 7240. What is the difference between that case and the case that was tried?

Mr. Botts: It was that case, four counts of that case, he plead guilty to.

The Court: I thought you said 7240, and there was 7279. Wasn't it 7279 that was tried?

Mr. Dressler: The last time, yes, sir; then the superseding indictment was filed, which is now before the Court.

The Court: I am trying to get the difference between 7240 and 7279.

Mr. Botts: No. 7240 was superseded by 7279 by reason of the fact that inadvertently the Lindsley Lumber Company was omitted, so the new indictment was solely for the purpose of incorporating the Lindsley Lumber Company. Mr. Giroux plead guilty to the first one, four counts of the first indictment, that did not include the Lindsley Lumber Company. He plead guilty to the four substantive counts.

The Court: In No. 7240 were there substantive and conspiracy counts?

396 Mr. Botts: That is right.

The Court: Sections 51 and 52.

Mr. Roberts: There were eight counts in that one.

The Court: In No. 7240 he pleaded guilty to the misdemeanor counts?

Mr. Botts: To the substantive counts, which were a violation of Section 52.

Mr. Roberts: Then we went to trial on all eight of the counts.

The Court: In the next case.

Mr. Roberts: Before Judge Barksdale.

Mr. Dressler: That was No. 7279.

Mr. Botts: That was not the indictment to which Giroux plead guilty.

Mr. Dressler: That is right.

Mr. Marsh: In No. 7240 Giroux was also a party defendant.

Mr. Botts: Certainly, he was. That is the one he plead guilty to. He plead guilty to 7240. I don't believe he was even— I am not sure. Was he a defendant in 7279?

Mr. Dressler: No.

Mr. Botts: He was left out of that case, because he had already plead guilty to 7240.

Mr. Dressler: I would like to make by proffer now.

397 We wish to propound a question to the witness first as to whether or not he was a defendant in this particular Case No. 7240, and whether or not he plead guilty to that case, wherein the indictment contained conspiracy counts against him. We wish to show from the record itself that there was an inducement for him to plead, in that he was not required to make any bond; bond was waived; that as a further inducement to pleading guilty to the misdemeanors, that the Government, through Mr. Potts, at the arraignment where he plead guilty, stated, reading from the file itself, under "Arraignment Proceedings":

"Mr. Botts: If the Court please, this indictment is in eight counts. I desire to arraign this defendant only on Count 2, 4, 6 and 8. You understand those counts, do you?

"The Defendant: Yes, sir, I do.

"Mr. Botts: How do you plead to those counts 2, 4, 6 and 8?

"The Defendant: Guilty.

"Mr. Botts: The Government desires to enter a nolle as to Counts 1, 3, 5 and 7 as to this defendant only.

"The Court: Were you served with a copy of the indictment before your arraignment?

"The Defendant: Yes. I got it here.

398 "The Court: The plea to counts 2, 4, 6 and 8 is accepted and the case is referred to Mr. Edwards for presentence investigation.

"Mr. Botts: I would like to make a statement.

"The Court: About the nolle, what did you nolle about him?

"Mr. Botts: As to the odd numbered—"

The Court: I would like to make a what?

Mr. Dressler: "The Court: About the nolle, what did you nolle about him?"

The Court: What was that before?

Mr. Dressler: "Mr. Botts: I would like to make a statement."

The. Court: That was Mr. Botts?

Mr. Dressler: Yes, sir. "The Court: About the nolle, what did you nolle about him?" Then, continuing:

"Mr. Botts: As to the odd numbered counts, 1, 3, 5 and 7 of this indictment in No. 7240, as to this defendant only.

"The Court: That motion is granted.

"Mr. Botts: In this case this man has talked to me and I am convinced he has talked honestly and fairly. It is my sincere belief that this Court will be in a much better position to fairly appraise this man's status and what would be a fair sentence after having heard the trial in this case. This
399 man is served with a subpoena to appear as a witness for the Government in the case when it is tried, and, therefore, I am asking the Court to defer sentence in this case on this man until your Honor has heard all the facts in this case, which, in many respects, will be to this man's credit. I think it will be fair to this man and also the Court will be in a much better position to appraise the facts in this case at that time. I am quite sure that no presentence investigation will disclose any previous criminal record or anything of that kind with reference to this man. I very earnestly request that the sentencing be deferred. Your Honor has done that in other cases. I think it will be a very wise procedure in this case. This case, by the way, is set for trial on the 17th day of January.

"The Court: Mr. Edwards, let me talk with you a minute about that.

"(Discussion between Court and Mr. Edwards.)

"Mr. Botts: Let me say further in this case this indictment has been attacked; it may end in the Supreme Court of the United States. There are some very, very serious
400 questions of law to be developed. I think they will all be resolved favorably to the Government. However, if, perchance, the Court should hold, which I think is extremely unlikely, this indictment is bad I would not want this man to suffer. He has come in and I believe has honestly disclosed his connection with this matter, and it is because I believe in his honesty in that respect that I have asked to dismiss the felony counts in this indictment and leave only misdemeanor counts pending. When a man comes in and has made a mistake and is honest about it, I think that is one thing in his favor. In addition, I wouldn't want this man to suffer any penalty at all if, perchance, the Supreme Court should not feel it is warranted in the Screws case. I want this man to have every benefit he can possibly have. In addition to that, the main thing is this, that there is a situation here that I have gone into extremely thoroughly; I am dead sure that no presentence investigation will give to your Honor the facts that will have a very particular bearing on what would be proper in this

man's case. In that case I really have no fear about the indictment, but that is the thing that I think is very important
401 in this case, and in my judgment it will be impossible for a pre-sentence investigation to fully advise your Honor, and I don't think there is any way you can do it except by a trial in this case. That is the real reason why I think that justice can best be done by following that course. As I say, it has been done in other cases, where it is pending in the Court of Appeals, and for the same reason. By the way, I would be very glad to have— I assume the pre-sentence investigation will go on, so your Honor will have the benefit of that, and this man is ready to go before the Probation Officer and cooperate in that respect.

"The Court: We will hold up the pre-sentence investigation and defer the pronouncement of sentence. If I should make any change in my ruling in regard to that, I will notify you.

"Mr. Botts: His address is on the bond that he signed. The other defendants, Yuhas, Ford and Perry, were notified to be here. The purpose of that notification was to bring to a head any motions. They have filed a motion and, therefore, that matter automatically goes off the arraignment calendar."

Also in the same file there appears a motion by the Government, which, as we claim, is a further inducement for
402 this man to testify on behalf of the Government, the said motion being entitled "Motion", in the same case, No. 7240-M-Criminal:

"Comes now Fred Botts, Assistant United States Attorney, and respectfully represents unto the Court that in the above-entitled matter bond has been fixed in the sum of $1,000.00 for the appearance of the defendant Henry B. Giroux; that said Henry B. Giroux is now in custody; that said Henry B. Giroux has been interviewed by the undersigned and the undersigned believes that said Henry B. Giroux will appear for trial when required to do so without the necessity of giving any surety on his bond; that had the undersigned known the facts of which he knows now, he would have issued a summons for said Henry B. Giroux instead of having him arrested,

"Wherefore, the undersigned moves the Court to enter an order permitting said Henry B. Giroux to be released by signing his own recognizance without sureties."

That motion was filed November 10th, 1948, and the Court thereupon, on the same date, entered an order in the file, as follows:

403 "This cause coming on to be heard upon motion of the Assistant United States Attorney, and for the reasons stated in the said motion, it is

"ORDERED that said Henry B. Giroux may be released upon his own recognizance and without requiring him to secure sureties on his bond.

"DONE AND ORDERED at Miami, Florida, this 10th day of November, A. D. 1948.

(Signed) "John W. Holland,
United States District Judge."

That motion is included as a part of our proffer, and the fact that he plead guilty and had the felony court dismissed against him, which are of the same character, with the exception of the Lindsley Lumber Company, or the corporate defendant, Dania Supply Company, that there was an inducement for him to testify in this case, as it appears he is an accomplice and a co-conspirator, if the conspiracy is proven in this case, and that the jury has a right and also the defendants have a right to inquire into the motives of the witness as he so testifies from the stand, especially with that background behind him in this case, and, therefore, we have brought out in this case the type of testimony and the background on which it is based, as going only to the matter of motive and the inducement, if any, which might have caused him to change from a defendant in this case, and a co-conspirator or an accomplice, into a witness for the Gov-
404 ernment. This is not on the same plane or category as a defendant or ordinary witness testifying as to his credibility; this goes to his motive.

Mr. Botts: If the Court please, this record shows that the procedure followed was what has been followed in many cases. Now, your Honor is acquainted with the rule which permits us in cases where we think a man ill appear to issue a summons instead of giving bond. If they go into this they ought to go into the fact that on this particular indictment none of these defendants have ever been arrested. They were notified to appear, and they have never been arrested in this case, because we thought they would appear. I don't think even counsel the other way will contend I have offered them any inducement by treating them just like I treat any other person. The only inquiry that I make is how can I procure the attendance of the defendant, and if I think it can be procured without giving bond then I issue a summons to him, as I have done frequently, and which is authorized by the statute. The fact that after this man was arraigned I became convinced that he would appear for trial, and he was permitted to do that, he actually did appear, so I was justified in my conclusion. That is not any inducement at all to the

man to tell other than the truth. To go into the background on this case and prove all that was done and offer into evidence the record as to what I said at the trial, and so
405 forth, they are trying to get to a place where I have got to get on the stand. That is what they are trying to do. I will tell them now I am not going on the stand, but that is what they are trying to do. They are trying to embarrass me in a situation that has no rightful place in here. It was routine procedure here. Your Honor knows that in a case now pending before the Court of Appeals another defendant plead guilty and it has been more than a year and he has not yet been sentenced, because, just as I stated in this case, if the indictment was successfully attacked I did not propose for an honest man to come in here, and because he was honest and without a lawyer, to plead guilty—while I believed the indictment was good, I did not propose if this or any other Court should find that the indictment was defective for this man to be penalized because he was honest about it and told the honest truth about it. I do not propose to permit that to happen in any case in which I am interested, so I did what I conceive to be the duty of a United States prosecutor who wants to do justice, and that is all I did. They are welcome to go as deeply as they want to into this question "Were you offered any inducement". That is a proper question; they can go into it, and they are welcome to, because it is a fact in this nor in any other case has anyone ever been offered any inducement by me, and I know by my associate here, because we know what our
406 business is in this court, and we know what your Honor's business is. To sentence people is your Honor's business, and we don't try to attend to that. We don't make any commitments indicating that we think we can do it, because we know we can't, that is all. Now, it is conceivable that the fact that this man has plead guilty—I don't believe that is even material, but it is conceivable that that might have some bearing upon the weight to be given to his testimony, and, as I stated, though I believe it is not proper, I am willing for them to ask this question, "Did you plead guilty in this court to four counts of an indictment, charging you with being present and participating, to that extent, in this flogging that you have described," and let him say, "Yes", that he plead guilty to that. Now, then—

The Court: In that way you would not refer to Section 52. The way you put it there would be understandable by the jury, would it?

Mr. Botts: Yes, sir, that he plead guilty in connection with that matter. Then the question of what sentence he received is no affair of this jury or anybody else, except Judge Barksdale, who imposed that sentence. But to go into all of this collateral stuff about what took place when this man was arraigned as having some far-fetched bearing upon his credibility, that is going too far afield, and if they try to pursue it that far I just feel compelled to say, "All right, I won't
407 agree to anything," but I am willing to go as far as it is conceivable that there is any materiality, because if this man is not telling the truth I am just as anxious for this Court and this jury to know it as anybody, and if there is any motive impelling him now except the motive to tell the truth I am willing for them to develop it, and, therefore, on the off chance that the fact that he has plead guilty to a substantive offense might in the minds of the jury have some bearing with them as to his credibility I am willing for that one question to be submitted to the jury. To more than that I shall object.

The Court: That would be on motive or credibility, now?

Mr. Botts: Either or both. Let the Court charge that it is a matter for such bearing, if any, as they may properly give it, on his motive and on his credibility.

The Court: We are going to take our recess. Let the jury come in at this time, then I will announce my ruling at the opening of the afternoon session.

Mr. Dressler: We do not consent to that and, therefore, will await your ruling.

Mr. Roberts: In other words, we will not agree to Mr. Botts' proposition, that just that one thing go before the jury.

(The jury then returned to the jury box.)

The Court: We will take our noon recess. I will make it shorter today. We will reconvene at 2:00 p.m.

408 (A recess was then taken until 2:00 o'clock p.m. of this date.)

AFTERNOON SESSION

Miami, Florida,
Wednesday, April 20, 1949,
2:00 o'clock p.m.

(Trial resumed pursuant to noon recess. Appearances same as heretofore noted.)

(The following proceedings took place without the presence of the jury:)

HENRY B. GIROUX,
a witness called on behalf of the Government, thereupon resumed the witness stand, and further testified as follows:

CROSS EXAMINATION
(Continued)

Mr. Botts: In connection with this matter, to try and get it settled, I am willing for either of these questions to be asked the witness.

The Court: Is it your idea, Mr. Botts, that with the asking of one of those that all of these proffers should be denied?

Mr. Botts: It certainly is, because that would open up an almost limitless field for collateral issues, and we should not do that. Then after that question they can go as far as is proper within your Honor's discretion in asking whether or not in connection with the disposition of that case he received any promise of any character or whether or not that in any way is influencing his testimony.

The Court: Just by questioning him?

409 Mr. Botts: By questioning him, yes.

The Court: But not to go into the records?

Mr. Botts: Oh, no. If we go into that we are just going to open up a limitless field. I really feel the second question is unnecessary.

The Court: I think, Mr. Botts, if Mr. Guerin will write out there in longhand the question that you suggested be asked, which would not incorporate reference to Section 52, I think it would be better, because that would be more intelligible to the jury.

Mr. Botts: That is the reason I think the second question would be unnecessary.

The Court: Let Mr. Guerin write out the question that you suggested.

Mr. Dressler: The Court is denying our proffer?

The Court: Wait a minute.

Mr. Dressler: I want to be sure as we go along we take care of that. I wish the Court would read that before it makes its ruling. (Referring to question suggested by Mr. Botts.)

The Court: All right. All proffers are denied, and the Court makes the observation that if any of the defendants desire to ask the question which has been written out there, suggested by the District Attorney, that can be answered, they may do so.

Mr. Botts: Or a question of similar import, may I

410 suggest.

The Court: Or a question of similar import.

Mr. Dressler: The Court has directed counsel to read into the record the following question—

The Court: Which has the approval of the Court.

Mr. Dressler: Which has the approval of the Court.

The Court: And that I adopt the position of the Government.

Mr. Dressler: And that the Court adopts the position of the Government. The question approved by the Court is as follows: "Did you plead guilty in this court to four counts of an indictment, charging you with being present and participating, to that extent, in this flogging that you have described?"

The Court: Do you want him to answer that question now?

Mr. Dressler: I would like to, frankly, follow that up with other questions along that line. We can do that, so that the Court may rule on it.

Mr. Marsh: I object to that question being asked on the ground that it assumes these men—it begs the question concerning this conspiracy and goes outside of the charges of the Court in the previous trial of this cause.

The Court: That objection is overruled.

Mr. Roberts: He didn't plead guilty to being present;
411 he plead guilty to aiding and abetting.

Mr. Botts: They are getting technical now.

Mr. Roberts: We will plead guilty to being present.

Mr. Botts: At the flogging?

Mr. Roberts: Yes. We were present; we never did deny it.

The Court: Mr. Botts, do you want to change the question, "Did you plead guilty in this court to four counts of an indictment, charging you with being present and—"

Mr. Botts: He plead guilty to aiding and abetting.

The Court: Do you want to change this now?

Mr. Botts: "Did you plead guilty in this court to four counts of an indictment, charging you with aiding and abetting in the floggings which you have described?"

The Court: You think that is a proper question?

Mr. Botts: I think so. I think you might put the word "alleged" before "floggings".

The Court: The permissive question is this now, gentlemen, and after I read it I am going to hand it to the Clerk and any of you may make whatever use of it you wish to: "Did you plead guilty in this court to four counts of an indictment, charging you with aiding and abetting in the floggings which you have described?"

Mr. Botts: May I suggest that you add "or a question of similar import",

412 The Court: Or you may ask a question of similar import. Then, Mr. Marsh, since the Court has stamped with approval—it is a different question, specifically, and I have added, "Or a question of similar import,"—do you wish now to make an objection to the question that the Court has indicated it would allow?

Mr. Dressler: Mr. Botts, since I was not in that previous trial, may I ask if that first indictment charged aiding and abetting, or if it charged the substantive offense?

(Discussion between Mr. Dressler and Mr. Botts)

Mr. Botts: I notice they mention aiding and abetting.

The Court: Will you change it and make a proper question, Mr. Botts? I followed your suggestion.

Mr. Botts: I think the best thing to do is copy it from the judgment. "Mr. Giroux, did you in this court plead guilty to an indictment, No. 7240, charging that you did wilfully under color of law; subject and cause certain persons, inhabitants of the State of Florida, to deprivation of their rights, privileges and immunities secured to them and protected by the Fourteenth Amendment to the Constitution of the United States?" That is reading from the judgment.

Mr. Dressler: We should go a little further as
413 to identifying the complaining witnesses as the ones in court, and not go into another case.

Mr. Botts: I think so. "Mr. Giroux, did you in this court plead guilty to an indictment, charging that in connection with the alleged flogging of Frank J. Purnell, Jr., Chester Robinson, Henry W. Priest and John P. Sturniolo you did wilfully under color of law, subject and cause certain persons, inhabitants of the State of Florida, to deprivation of their rights, privileges and immunities secured to them and protected by the Fourteenth Amendment to the Constitution of the United States?"

The Court: That is the one you approve?

Mr. Botts: Yes; I approve that.

The Court: The last question that was read is the one the Court approves. Do you want to make an objection to that being asked, Mr. Marsh?

Mr. Marsh: No, sir; I won't object to that.

Mr. Dressler: Then, I expect to follow that question up with other questions. I would like to have the Court rule on them, so we won't waste time.

Mr. Botts: I have said I have no objection, after that question is asked, to propounding a question to this witness seeking

to elicit whether or not by reason of any circumstances
414 in connection with that he was promised immunity or favor or anything of that kind.

Mr. Dressler: I expect to go beyond that. I want to be frank with you and the Court.

Mr. Botts: All right.

Mr. Dressler: I will ask the witness this question, as to whether or not the fact that the felony counts were dismissed in that indictment, which were similar to the conspiracy counts in the trial here, gave him any hope or expectation that he would not be prosecuted in the future on those counts? That case is still open on the felony charge.

The Court: What do you say to that, Mr. Botts?

Mr. Botts: As a matter of fact, I don't think they have a right to go into the question as to any other charges, other than the charge that he plead guilty to. They are free to ask him all they please, so far as I am concerned—I mean, they are free to ask him whether or not in connection with the entire surrounding circumstances he was promised or led to believe that he would secure any immunity or favor by reason of his testimony. Now, I don't think it is proper for him to be asked specifically about the disposition of the felony counts in that indictment. As a matter of fact, the disposition of those felony counts was on my initiative because of certain ideas that I had about the matter, and this witness
415 had nothing to do with that. He was not promised anything, that they would or would not be disposed of, or how they would be disposed of; there was no promise. After an explanation he stated his desire to plead guilty to those counts, which he did plead guilty to, and on my motion and without any promise to him whatever the other counts were left open, and if I haven't already nolled them it is my full intention to do it. I will say that I don't ever intend to try this witness on those counts if they have not been dismissed, but there was no promise made to the man one way or the other about them. Of that I am certain.

The Court: Do you object to this last question Mr. Dressler stated he intended to ask?

Mr. Botts: Yes, sir; I object to that, because that is bringing in those felony counts and I don't think it is right, because I don't think the disposition of another indictment ought to be inquired into. But he is just as free, so far as I am concerned—I mean, your Honor will decide, of course, but so far as I am concerned, he is just as free as he can be to ask him in general terms all he pleases as to whether or not by anything that was said in connection with that matter he was led to believe

that he would receive any favor, reward or anything else if he testified. He was told that I expected to use him as a
416 witness, and I didn't ask him whether he wanted to be used as a witness or not. I suspect he would rather not be used, but I didn't ask him about that, because when he plead guilty he had no right to decline to testify. I brought him here because I had a right to bring him here, regardless of his feelings about it.

The Court: You just indicated, as I understand, what you intend to ask?

Mr. Dressler: That is the question. In other words, instead of doing this before the jury and having them go out again, and all of that—

The Court: You want me to rule on that?

Mr. Dressler: Yes, sir.

The Court: I sustain the objection.

Mr. Dressler: The next question I want the Court to rule on is this:

Q. You were fully notified of the charges in the particular case in which you plead guilty? Were you not so notified?

A. What do you mean by that?

Q. When you plead guilty.

The Court: Are we going on? You make no objection?

Mr. Botts: Yes, I do. because I don't think we ought to inquire into the details or anything further than is perti-
417 nent to the question as to whether or not this man's testimony is now influenced by anything that transpired in connection with his plea of guilty. What was this question?

(The pending question was thereupon read by the reporter.)

Mr. Botts: I have no objection to that.

The Court: You were so advised on that?

Mr. Botts: Sure; he knew what he was doing.

Mr. Dressler: Now, the next question:

Q. At the time you plead guilty to the charges you were fully notified.

Mr. Botts: May I suggest the use of the word "advised" instead of "notified".

Mr. Dressler: All right; advised.

Q. Did the District Attorney at that time tell you that in consideration of your pleading guilty to the misdemeanor charges he would dismiss the felony counts against you?

The Witness: Do you want me to answer that?

The Court: Do you have any objection to that?

Mr. Botts: No, sir.

The Court: Think it over carefully.

Mr. Botts: No, sir. Go ahead; let him answer it. I know what the answer will be. What is your answer, Mr.
418 Giroux?

The Witness: As a matter of fact—

Mr. Botts: Wait a minute. Answer "yes" or "no".

Mr. Dressler: Let him answer the question.

Mr. Botts: Just answer the question.

The Witness: There was nothing promised, no. What I was going to say is, as a matter of fact, while I was being questioned by Mr. Botts his attitude toward me was I was just as guilty as the rest of them.

Q. (By Mr. Dressler) Therefore, your statement is he held no promise toward you or never told you he would dismiss the felony counts against you?

A. No, sir. I didn't know.

Q. Were those felony counts dismissed against you before you plead guilty?

A. No, sir. I come up before the Court here and they asked me how I pleaded, and they asked me if I read the counts; they asked me if I understood the counts, and I said, "Yes. I plead guilty to them."

Q. To what counts did you plead guilty?

A. I don't know the numbers of them.

Q. Did you select the numbers you were to plead guilty to?

A. Yes; I knew them by heart, because I had read them all over; I had a mimeographed copy.

419 Q. What did you say to the Court as to the counts you did not plead guilty to, that is, Counts 1, 3, 5 and 7?

A. I pleaded guilty in the beginning merely to being there. I explained my situation as being a clerk. That is to what extent I went.

Q. Did you mean to plead guilty by that to conspiring?

A. No, sir; I didn't conspire, because all I done was the bookkeeping. I wasn't in on it until the last minute.

Q. As a matter of fact, did you conspire with them?

A. No, I didn't. I was just the clerk. He erased and read and re-erased.

Q. Did you ever enter into any conspiracy with any of these men to deprive these complaining witnesses of their constitutional rights?

A. Have I ever entered into any?

Q. Yes.

A. No, sir, I didn't.

Mr. Botts: I don't think that is a subject of proper examination here, as to whether or not he did. The question is,

was he promised any reward, is he testifying here as a proper witness, and how should the weight of the testimony
420 be evaluated, but whether he thought he was guilty or not guilty hasn't anything to do with it.

Mr. Dressler: Off the record a minute.

(Discussion between Mr. Dressler and Mr. Botts.)

Mr. Dressler: As far as I know, the felony counts are still outstanding in this case. He has plead guilty to the misdemeanor. The felony counts are of the same character and order as these gentlemen here are being tried on now. We think we certainly have the right to show that with those charges outstanding he has never been charged or made a defendant in this case, and he has that hope and expectation in his heart, and whether he admits it or not the jury can infer he has some motive for so testifying in this case.

The Court: What do you say, Mr. Botts?

Mr. Botts: I am going to withdraw all objections and let them go as far as they can. I don't think they can get any comfort out of it. I will withdraw all objections and let them go as far as they want to. Now, we will see where you get, and I don't think you are going to like it, either.

The Court: This has all been advisory. Of course, I have acted on certain matters— It has not all been advisory
421 because I have made certain rulings, but certain matters are left open.

Mr. Dressler: Let the reporter read those questions that I have asked.

The Court: Mr. Botts stated he was not making any objection, as I understood it. With reference to any rulings that the Court has made, I have followed the Government's position. Now, in regard to the denial of the proffers, you think that is right?

Mr. Botts: Oh, undoubtedly.

The Court: So far as this Court approved question, I think that should remain.

Mr. Botts: If they want to ask it, they may.

The Court: In regard to any other questions they might ask, now, shall we just leave that for you?

Mr. Botts: Let's leave that. If they go too far, why, then, I might do something about it, but as long as it is merely searching into the question as to whether or not this man was promised anything or has any reason to hope for any benefit by his testimony, they are welcome to go as far as they can, because I know they can't get to first base by it.

The Court: We will leave the record as it is. Certain rulings have been made. As to those rulings, why, you are entitled

to an exception, applicable to each and every defendant.
422 Each and every defendant may—Well, anyone to whom they are applicable, you are entitled to an exception.

Mr. Roberts: I understand he may be interrogated as to what matters he has plead guilty to, and as to what matters have been dismissed against him or he has plead not guilty to, and what matters have been nolle prossed as to him.

The Court: Suppose you just go ahead and ask the question when the jury comes in, and we will see what the attitude of the District Attorney is as to that particular question. Let the jury come in.

(The jury then returned to the jury box.)

The Court: Mr. Clerk, poll the jury.

(The Clerk then polled the jury.)

The Court: You may proceed.

Q. (By Mr. Roberts) Mr. Giroux, on or about the 4th day of February, 1949, did you enter your plea of guilty in this court in Case No. 7240, in the case of United States of America versus Jay G. Williams, Joseph V. Perry, Henry B. Giroux, John S. Bombaci, Charles R. Ford and Andrew J. Yuhas, did you enter a plea of guilty to Counts 2, 4, 6 and 8 of that indictment, where you were charged with wilfully under
423 color of law, subjecting and causing certain persons, inhabitants of the State of Florida, to deprivation of their rights, privileges and immunities secured to them and protected by the Fourteenth Amendment to the Constitution of the United States, the persons referred to being the complaining witnesses in this case, that is, Purnell, Priest, Robinson and Sturniolo? Do you recall entering a plea of guilty?

A. I entered a plea of guilty. If that is the one I entered a plea of guilty to, that is true.

Q. Do you recall that that indictment was in eight counts?

A. That is right.

Q. Then, there were also Counts 1, 3, 5 and 7, charging you with conspiracy to deprive those same people of certain civil rights; is that correct?

A. That is right. I remember those.

Q. What did you do, as far as Counts 1, 3, 5 and 7 were concerned?

A. Well, I haven't done nothing to them.

Q. Is it not a fact that those counts were nolle prossed as against you?

A. They were what?

Q. Nolle prossed, or dismissed; no action taken.

A. Well, I don't know.

424 Q. Have you ever been brought to trial on those counts?

A. Not yet.

Q. Have you ever entered a plea of guilty or not guilty to those counts, or do you remember?

A. I Pleaded guilty to just 2, 4, 6 and 8.

Q. 2, 4, 6 and 8? Is that correct?

A. That is right.

Q. Were you ever given a sentence of any kind?

Mr. Botts: Wait a minute, now. That is clearly objectionable if they propose to go into the question of what the sentence was. If they propose to merely ask him if he has been sentenced I have no objection, but as to what that sentence was is clearly objectionable.

Mr. Roberts: I have asked him, has he ever been sentenced.

Mr. Botts: All right; no objection to that.

The Witness: Yes.

Q. (By Mr. Roberts) Don't answer this question until Mr. Botts objects to it. What sentence did you receive?

Mr. Botts: Now, that I object to. It has nothing to do with it, and it has no materiality in this case. That was the business of the Judge who passed that sentence. The only purpose of this is to test the question of what weight shall be

425 given to the testimony of this witness, as to whether he was promised anything or whether or not his testimony is now affected by that. Well, now, if there was anything that would necessarily involve the question as to whether or not he made a trade with the Judge, and that is not done, not in this court.

Mr. Roberts: I agree with Mr. Botts as to the last statement, one of the few times I can agree with him.

Mr. Botts: If you agreed oftener you would be right oftener.

Mr. Roberts: The jury agreed with us the last time we tried this case, Mr. Botts.

Mr. Botts: That was improper and you know it.

Mr. Roberts: You asked for it.

Mr. Botts: I didn't ask for it.

Mr. Roberts: If the Court please, the witness' credibility is to be tested not only by promises which may be made to him by Government counsel but also by hope or expectation which he may have in the future, and if there is any pending hope or expectation one way or the other I think that that is something which the jury rightfully may take into consideration.

Mr. Botts: Correct, but the sentence that he received has

nothing to do with what happens in the future. That
426 is something that has been done in the past by the Judge of this court. It has nothing to do with what happens in the future.

The Court: I will take about a five-minute recess.

(A short recess was then taken.)

Mr. Botts: If the Court please, I am willing to have read into the record this portion of the minutes, under date of November 12th, 1948, in connection with indictment No. 7240, involving Henry B. Giroux:

"Whereupon, the defendant—" That is Giroux. "—was duly arraigned upon the indictment filed herein and entered his plea of guilty on Counts 2, 4, 6 and 8. On motion of the District Attorney Counts 1, 3, 5 and 7 were ordered nolle prossed." That is the status of that.

The Court: Do you still insist on an answer to that question, or do you withdraw your last question as to what the judgment was?

Mr. Potts: Your question was as to the sentence, and that I still object to.

Mr. Roberts: No. The question as to the sentence we ask your Honor's ruling on.

The Court: Mr. Botts, I am inclined to think it is all right for him to say what the sentence was.

Mr. Botts: I can't understand what materiality that
427 has. However, if your Honor wants to, I think the minutes of the court would be the proper place to go for that.

Mr. Roberts: Do you agree to reading the judgment of the Court?

Mr. Botts: I will not agree to it, because I don't believe that it is proper, but if the Court is going to permit the question I think I will object on the ground that this is not the proper way to prove what was done, that the minutes of the court would be the highest and best evidence and that, therefore, on the cross examination of this witness it would be improper because it is not the best way to prove records of this court, when the minutes are here.

Mr. Roberts: I was merely trying to save time.

Mr. Botts: We have got lots of time. I work by the year.

Mr. Roberts: I know, but I work by the case.

The Court: I would let the judgment of the court go in. Do you want him to answer it?

Mr. Roberts: If the judgment of the court goes in there is no necessity for his answering it.

Mr. Botts: You can put that in at an appropriate time.

Mr. Roberts: Let's do it now.

428 Mr. Botts: No, let's not do it now.

Mr. Roberts: Perhaps we better let the witness answer the question.

Q. What was the judgment or sentence pronounced on you by this Court on your entering a plea of guilty to those four counts?

Mr. Botts: I object on the ground that the minutes of the court is the best evidence of that fact.

Mr. Roberts: I submit to your Honor if he knows what it was that he can testify accordingly, what sentence the Court gave him. Certainly, no one would know it any better than he; as a matter of fact, it is material that we know what he believes the Court's sentence to be, whether it is right or wrong, because that is the matter we are trying to prove now, what he thinks his sentence was.

Mr. Botts: Go ahead. Let him answer; I don't care. We are killing a lot of time; we are getting nowhere.

Q. (By Mr. Roberts) Do you remember the question?

A. You want to know what sentence I got on that?

Q. Yes, sir.

A. I was given three years' probation, suspended sentence. That meant if I made a mis-move in any one of those

429 three years I would have to serve three years.

Q. You are on probation for three years?

A. Yes, sir. I am on probation at the present time, and if I tell a lie now I have broken my probation.

Q. At the present time there are no charges of any kind pending against you, are there, to your knowledge?

A. I don't know what this nolle pross means.

Q. That means dismissed.

A. Well, I am not certain.

Q. Did you at any time conspire with any of these defendants to injure, oppress, threaten or intimidate Frank Purnell from the free exercise and enjoyment of his rights and privileges as an American citizen? Did you enter into any conspiracy?

A. No, sir. I was merely the bookkeeper taking notes.

Q. I will ask the same question as to conspiracy as against Chester M. Robinson. Your answer is the same?

A. Yes; the answer is the same against all of them.

Q. So, you entered into no conspiracy of any kind to deprive them of their civil rights; you just kept the books?

A. I was writing there, just like this gentleman here; erasing and putting in what they wanted in there.

430 Mr. Roberts: That is all.

Q. (By Mr. Bombaci) In your testimony this morning you stated that Bombaci struck Mr. Priest and also Mr. Robinson; is that correct?

A. I am looking you right in the eyes and I am saying yes.

Q. Will you explain to this jury the exact position that Mr. Robinson was in when I kicked him, and also the exact position that I was in?

A. Mr. Robinson was knocked off the stool by Mr. Williams and you had that stick in your hand; as you remember, you were always poking and jamming around; as you remember, you said, "Get up; get up; get up; get up," and poking him with the stick. He raised his short and says, "Be careful; I just had an appendicitis operation, and you kicked him again with your foot, just like that (illustrating).

Q. In other words, I kicked him twice?

A. That is right. Well, the first time was—you were always poking him with that stick and your foot, kicking him up off the floor. Now, does that satisfy you?

Q. Yes.

A. Of course, you know, but for the jury's benefit.

431 Q. You, perhaps, remember when you testified in this courtroom in January, 1949?

A. In January, 1949?

Q. Right in this courtroom, the first trial we had.

A. I don't remember the exact date.

Q. Well, it was in January. You know that?

A. If the court records say so, that is right.

Q. You remember when you were propounded this question, "Who was doing all the beating"?

A. That is right.

Q. Do you remember what your answer was to that question?

A. I said Williams and you beat Priest once, but that wasn't the beating you asked me about. That was kicking. That is true, you did do that.

Q. Do you remember when you made this statement, you said the only one who wanted to beat anybody was Williams; he was the only one who hit anyone, except Bombaci one time pushed old man Priest off the stool, and you also stated—you made a gesture like that (indicating), and you said Bombaci pushed old man Priest off; he didn't hurt him; he didn't mean

to knock him off, but Williams made him do it? Those are the exact words you used.

432 A. If that is in the court—If the clerk of the court put that down. I don't remember saying it; I don't remember the exact words. I remember you knocking old man Priest off. You remember that, too.

Q. You remember you made the statement yourself, "As a matter of fact, Bombaci at that time was in a cast with a broken back and was in no condition to beat anybody up"?

A. You didn't beat him up. You pushed him off the chair. You kept poking and hitting him with that stick. You remember your kicking him when he got up. I mean actually slugging, and so forth, you were incapable.

Q. You remember when you made the statement in January, you said, "Bombaci didn't arrive or participate in any of this investigation and interrogation until late in the evening of March 28, 1947"? Do you remember that?

A. I don't remember that, no. I remember when you arrived.

Q. Do you deny it now? I mean, this morning you said I was there on March 27th.

A. You were there at the time of the first beating.

Q. That would be what date?

433 A. I don't remember the date.

Q. The first man that was beat your were there, because you told me, if you remember, when we were over there eating, you said, "Boy, I thought I would never make it. The Chief told me there was going to be big things happening, and I wanted to be here," when we went over and had a sandwich. He told you and me to hurry back.

Q. You deny the fact you testified in January that you said that I didn't arrive up there or participate in this investigation until late in the evening of March 28th, 1947; is that correct?

A. I am not certain of the dates. If that is the court record.

Q. Were you certain in January?

A. I beg your pardon?

Q. You were certain in January, were you not?

A. I know exactly when you were there. You were there at the first beating, whenever that date was.

Q. Do you remember when you made that statement here in January, of 1949?

A. You have got it before you. I don't have no record here.

Q. You deny you made that statement under oath?

A. I don't recall the exact date. You are trying to

434 cross me up there over something.

Q. I am not trying to cross you up. In fact, I am using your words you used in this courtroom in January, 1949.

A. I am going to tell it to the best of my ability. You know, as God is our witness, you went over to get a sandwich, and you told me you were glad to be there for things were going to happen. You were there at the first beating. There were other times you were not there, but that was prior to that beating. That is what I thought they were interested in.

Q. According to your testimony you claimed that I had no participation in the investigation up there until late in the evening of March 28th, 1947. Today you came to the courtroom and you said I beat all of those people up; you also added a lot of colloquy.

A. I didn't say you beat all of those people up.

Q. You added a lot of colloquy to that. You said I kind of liked the word "bastard," and used that a couple of times.

A. You did. You know you did.

Q. Which one of those two testimonies would you say is correct, the one you gave in January or the one you gave this morning?

A. It is impossible for me to remember every little
435 thing unless it is recalled to me.

Mr. Bombaci: That is all.

Q. (By Mr. Boardman) Reflecting back to March of 1947, and prior thereto, how long were you employed by the Continental Detective Agency on the premises of the Lindsley Lumber Company?

A. Well, now, what yard do you mean?

Q. On the yard that we are speaking about, Northwest 17th Avenue.

A. You mean where the beatings took place in that shack there?

Q. How long were you employed by the Continental Detective Agency in the yard at Northwest 17th Avenue and about 38th Street in Miami, Florida?

A. When the questioning first started, first taken place?

Q. Yes, sir.

A. I had been employed by them for quite some time.

Q. How long?

A. I don't remember to the day.

Q. Were you employed on March 26th, of 19[illegible]?

A. March the 26th?

Q. Yes, sir.

A. No, sir. I was employed long before that.

436 Q. Were you employed on March 18th, 1947?

A. I was employed when I first went to work for them at the Hollywood yard.

Q. You say you worked like a dog out there. Is that true?

A. That is definitely true; yes, sir.

Q. How long did you work like a dog?

A. I don't remember the exact days, but it was quite some time.

Q. For what purposes were you employed by the Continental Detective Agency on the premises of the Lindsley Lumber Company at Northwest 17th Avenue and 38th Street?

A. Well, I was given all the news about everything that they had compiled together, and I was to take care of it. I was to write reports, not for myself, but from what other agencies got against them. They would call them in. Mr. Yuhas would go over and get them and bring them in. Then I would write down what they wanted me to write, and so forth.

Q. When you were working in the yard out there and employed by the Continental Detective Agency what were you looking for?

Mr. Botts: I think you should specify the time.

Mr. Board: He doesn't know the time. Just prior to
437 March 26th is all I can get from him. He doesn't know how long it was; he knows it was a long time.

Q. I believe, Mr. Giroux, that you did testify that you had a conversation with the head of the Continental Detective Agency in the office relative to the purposes for which this investigation was going to take place at the Lindsley Lumber Company yard?

A. That was in Chief Williams' office.

Q. Is that correct, you had that conversation? Is that right?

A. That is right.

Q. What was the purpose surrounding this investigation? What were you investigating?

A. That is what I would like to know myself.

Q. You testified, I believe, you were investigating alleged stealing at the Lindsley Lumber Company yard; is that correct?

A. They told me that there was wholesale stealing going on. I didn't see no wholesale stealing going on.

Q. Is that correct or not, that that is what you were employed to do by the Continental Detective Agency?

A. I was employed to see if I could find any stealing going on. They told me there was plenty going on.

Q. That was told to you by the head of the Continen-
438 tal Detective Agency; is that right?

A. That is right.

Q. On or about March 18th, of 1947—that is eight days prior to this date that is so firmly fixed in your mind, the date of the

beating—eight days prior to that time were you working like a dog then at the Lindsley Lumber Company yard?

A. I don't recall that. I got laid off at the Buena Vista yard.

Q. Was it the custom in your employment by the Continental Detective Agency to make any reports?

A. Was it customary for me, you mean?

Q. That is right.

A. Oh, yes; we turned in reports.

Q. You did turn in reports. Was that a daily report?

A. Yes, sir.

Q. On or about March 18th, 1947, did you submit a report to your employer, the Continental Detective Agency, concerning one Chester Robinson, one of the prosecuting witnesses in this case?

A. I don't know about the date, but I do remember turning in a report about—I didn't necessarily turn in a report. The Chief told me to write it up.

Q. How old are you now?

439 A. Thirty-eight years old.

Q. At that time you were two years younger, which is thirty-six; is that correct?

A. That is right.

Q. I show you that instrument and ask you if you can identify it (handing document to witness)?

A. That is—I was there, but that is not all my wording.

Q. At the time that you were employed by the Continental Detective Agency were you given a number as an agent?

A. Yes, sir; that is right.

Q. What number did you have?

A. Seven.

Q. The number "7" appears on this report; is that correct?

A. Yes, but that is wrong, because every report is approved by Chief Williams. As a matter of fact, when—before I wrote up that report I told him what was happening. He says, "That is just what we want; put it in." I haven't any positive proof that Chester Robinson did take that money. I had to leave. I wasn't there long enough to complete what you would call an investigation there.

Q. This report you made to your employer, the Conti-

440 nental Detective Agency?

A. No, sir. I didn't make that report the way that is. I told him what happened and he told me to put it down.

Q. Is this your typing?

A. I don't type.

Q. You don't type?

A. No, sir.

Q. To refresh your memory, did you on or about March 31, 1947, ever testify in front of Robert R. Taylor, the County Solicitor of Dade County, Florida, in connection with this investigation?

A. Yes, sir, I did, if that is the date. I don't recall the date. That is a couple of years ago.

Q. This is another instrument that you have seen previously (handing document to witness). The number of the page there is No. 13. I ask you to turn to 14, which is the next page. Do you, Mr. Giroux, recall this answer being given by you to the question on Page 14 of that testimony, "Who did," and immediately thereafter this is your answer: "This here man, the customer so he could be clear to drive out, and I kept waiting for Mr. Robinson—" Are you following me? I said Page 14.

A. This is 14.

441 Q. The beginning part of this answer I am now going to read again: "This here man, the customer so he could be clear to drive out, and I kept waiting for Mr. Robinson to go in the office or to get a slip or something like that or the customer as well, but neither one of them went in and after the man drove the car out, he got out and he handed some bills—I know money when I see it—rather quickly to Chester Robinson and he shoved it in there and closed his coat, and they started conversing about something and then the customer drove on out. Well then I followed Mr. Robinson. I thought, giving the man every benefit of the doubt, that he would go in and deposit the money, but he had no intention of doing so. Well, anyway, he didn't go in. Another customer came in and hollered at him and I was following him to this other customer and they shook hands and he started showing this other man lumber when a call came out from a truck driver and the man I was with was hard of hearing and I had to go because he asked me, so I had to leave and go." Do you remember giving that answer under oath before Robert R. Taylor?

A. If that is the account from Mr. Taylor's office, I said it, but I was under threat when I went up there. I was told to say what—make it juicy or otherwise, as I said in the other case before.

442 Q. You were under threat?

A. Yes, sir.

Q. Did you report that threat to any competent police or protective agency?

A. I done the best thing I could, left town in the middle of the night. Don't you think that is sufficient?

Q. You left town?

A. Yes, sir.

Q. Were you afraid of someone?

A. As quick as I could I sold my dead father's ring he left me to get money to leave town.

Q. How quick is that?

A. That has nothing to do with it.

Q. How much did you weigh on the date you gave this answer?

A. Man, man, I am not afraid of you or the likes of you or anything, but when a man carries a gun that is different. I am afraid whether you are or not. That is different.

Q. How much did you weigh?

A. 214.

Q. I handed you this report and you read it and you said this was not your report.

A. That is right.

443 Q. That is testimony given under oath.

A. I admitted here that I perjured myself there, because I was under threat. I admitted that in court at the last trial.

Q. You perjured yourself?

A. In the County Solicitor's office, yes.

Q. Under oath?

A. My wife and I very near divorced on it. She is sitting out there; ask her.

Q. Now, there is something else I would like—

Mr. Botts: I think the witness has a right to explain these threats he said he was under.

Mr. Boardman: You are going to have him, then he can explain. He said somebody threatened him. When you get him on redirect you can ask him all the questions you want to.

Mr. Botts: I think he has a right to explain it now.

Mr. Boardman: He will have to explain it in response to my questions. If you have any other explanation you desire him to give, he can give that when you have him.

Q. Let me understand one thing before I proceed. Your testimony today is still the same as it was at the previous trial, that Joseph V. Perry did not beat anybody; is that correct?

A. Mr. Perry didn't beat anyone, no.

444 Q. Now, I would like to direct your attention back to Page 15 of the report. Do you recall this question being propounded to you at that time: "Did you threaten, lay a hand on in violence or beat up any of these other suspects?" Do you recall that question?

A. If that is in their records.

Q. Do you recall this answer: "No, sir"?

A. Oh, yes; I said "no" to everything.

Q. "Did you see anybody else do that?" Do you recall that question?

A. The answer would be "no."

Q. Your answer was, as a matter of fact, "No, sir."

A. That is right. I can tell you without reading this.

Q. Do you remember this, though, which is on the next page, Page 16, in explanation of that answer you said, "If anyone would have done that I wouldn't have had any part of it. That's the reason I know it didn't take place. We don't handle out investigations that way." Do you remember giving that answer under oath?

A. I remember that answer. I don't remember half of what I said up there. All I know was that the Chief told me
445 everything was fixed, all we had to do was go up there and make a big story and say "no."

Q. I think that has explained your answer satisfactorily. Do you recall that this testimony was given three days after the alleged facts and circumstances took place about which you are testifying now?

A. Yes.

Q. Now, Mr. Giroux, I direct your attention to the bottom of Page 14 of that same report, and ask you if you remember this question being asked you by the County Solicitor of Dade County, Florida: "Did you go to John Sturniolo's residence at any time"? Do you remember that question?

A. Yes, sir; I remember that.

Q. And giving this answer: "The only time I went to Sturniolo's residence was to recover the lumber." Do you remember that?

A. That is right.

Q. "That's what I want to know. What did you do there? Then your answer, do you remember this: "As Sturniolo brought the lumber and roofing and so forth out on the truck, he called it off to me and I checked it," and this question then being asked you: "Is that the lumber that he stated he got from Lindsley Lumber Company?" You answered: "Yes, be-
446 cause after we had completed the loading of everything he had there, I handed him the paper and said now is that exactly what you have stolen. I said look the paper over to make sure. Well, there was one item I had double-checked and he crossed that out and I said, well, I'm glad you caught that." Do you remember that answer?

A. I don't remember all of that. That has been over two years ago. I don't have that good a memory.

Q. Did you have a permit to carry a gun, Mr. Giroux?

A. Yes, sir, I did.

Q. See if I recall your testimony correctly on this point. Did I understand your testimony on direct examination to be that you accompanied Mr. Sturniolo to the jail on the night of the 28th, I think it was?

A. I went there when Priest went.

Q. Sir?

A. I went there when Priest went.

Q. As a matter of fact, Mr. Giroux, do you know that upon your investigation as submitted to your employer, the Continental Detective Agency—

Mr. Botts: Wait a minute. I can smell it when it is wrong.

Mr. Boardman: I haven't stated anything yet.

Mr. Botts: I know exactly how you are headed and
447 it is improper and you know it.

Mr. Boardman: Read the question.

(The pending question was thereupon read by the reporter.)

Mr. Botts: Don't answer that question.

Mr. Boardman: It isn't finished.

Mr. Botts: I know where you are heading. Go ahead and ask it.

Q. (By Mr. Boardman) —as reflected in your report to that company, that one Sturniolo was actually, physically placed in jail in the City of Miami, Dade County, Florida?

A. No, sir.

Q. What was the purpose of your working at the Lindsley Lumber yard for the Continental Detective Agency?

A. I was the clerk at the time of the beating.

Q. Was that when you were working like a dog?

A. I don't like that inference you are giving to me. If you think unloading cement is play, try it sometime.

Q. That was your direct testimony.

A. That is true; I did. I haven't unloaded cement for a long time; I hadn't done that type of work. As a matter of fact, I have become lighter. I needed to make a living. To me it
448 was mighty hard work. It is working like a dog. Maybe to you it would be play, but to me I worked darned hard.

Q. Now, answer my question.

A. I am trying the best I can.

Q. If you don't understand my questions, say so, and—

A. I am just trying to tell the truth.

Q. —I will re-word them to suit you, so you can understand them.

A. There you go again; I mean, trying to be sarcastic.

Q. If you don't understand any of my questions I will be glad to reframe them. Nobody is trying to trap you.

A. I am not afraid of being trapped here. I am telling the truth.

Mr. Boardman: Will you go back to one of my questions I asked, and read it.

(The question referred to was thereupon read by the reporter, as follows: "Question: What was the purpose of your working at the Lindlsey Lumber yard for the Continental Detective Agency? Answer: I was the clerk at the time of the beating. Question: Was that when you were working like a dog?")

449 A. At what yard do you mean?

Q. At the yard—

A. At Hollywood.

Q. —at Northwest 17th Avenue.

A. I never worked at that yard.

Q. You never worked at that yard?

A. I just was over there on a truck a couple of times.

Q. On the 18th of March you were at that yard and observed Mr. Robinson, as reflected in your report; is that correct?

A. I observed Mr. Robinson, yes.

Q. And the purpose of your being in this investigation was to discover if there was any stealing going on; is that correct?

A. That is right.

Q. According to the sworn statement, Mrs. Sturniolo was, according to your own testimony, supposed to have stolen some lumber; is that correct?

Mr. Botts: Did you say "Mrs." or "Mr."?

Mr. Boardman: Mr.

A. If I wrote that— Oh, that was after Mr. Priest was beat up. He told about Sturniolo doing that.

Q. Mr. Sturniolo, according to your testimony, admitting stealing certain lumber and you went out to his house

450 to pick it up; is that correct?

A. I didn't go out there to pick it up. I rode with the truckdriver. Mr. Yuhas and Williams and those was there. I just stood out at the truck. They said, "Check off whatever is put on there." That is what I done.

Q. While at Sturniolo's house when they got the lumber, you left; is that correct?

A. That is right.

Q. Mr. Sturniolo then on the night of the 28th was actually placed in jail; is that correct?

A. The night that they got the lumber h. just left him there.

Q. That was the night prior to that, but the next night, on the 28th, after the alleged facts and circumstances took place,

about which you have testified, he went to jail; is that correct? Mr. Sturniolo on the night of March 28th, 1947, was actually placed in jail in the City of Miami, Florida; is that correct?

A. I remember him being placed in jail; that is right.

Q. It was because he stole lumber from the Lindsley Lumber yard; is that correct?

A. I couldn't say that, because he said he didn't steal nothing until they beat him.

Q. As reflected in your testimony given three days later; is that correct? You are not leading this jury and this Court into believing that you had no part in sending an innocent man to jail, are you?

451

A. No, sir.

Mr. Boardman: No further questions. I would like to have those marked for identification, if I may.

(The Confidential Report, dated March 18, 1947, was thereupon marked "Defendants' Exhibit No. 2 for Identification." The Confidential Report, dated March 28, 1947, was thereupon marked "Defendants' Exhibit No. 3 for Identification." The Confidential Report, dated March 27, 1947, was thereupon marked "Defendants' Exhibit No. 4 for Identification." The transcript of testimony of Henry B. Giroux, given before Robert R. Taylor, on March 31, 1947, was thereupon marked "Defendants' Exhibit No. 5 for Identification.")

Q. (By Mr. Dressler) What date was it when you left town?

Mr. Botts: If the Court please, I think this witness is entitled to some protection now. We have had this battery of lawyers, one after another, questioning this witness, and I think when one lawyer is questioning him he ought to question him and quit, and then another. Now, then, the gentleman who has just arisen has questioned this witness once.

452

Mr. Dressler: I will withdraw the question.

The Court: All right; question withdrawn.

Q. (By Mr. Boardman) You testified that you had a permit at that time to carry a gun?

A. Yes, sir.

Q. When you left town and went to Jacksonville did you return that gun to its owner?

A. Our permits and everything were taken away from us when they got a call in the office that this man had filed a complaint. Every permit had been taken away, with the exception of Mr. Perry's, and we were ordered to leave town and we left town, and that is where a couple of days elapsed in there. Then, when I come back, on the noon of the day we come

back in town, which was Monday, I wasn't even allowed to go home with my wife; as a matter of fact, she was worried to death. The Chief took me right up to the County Building there, in Mr. Taylor's place, and when that was over, then, I went home. I hadn't seen my wife for, I believe it was, two days.

Q. Where is the gun?

A. That I don't know.

453 Q. Did you ever return it to its owner, the Continental Detective Agency?

A. They picked up my cards and everything; they were called in. He took them to Chief Mitchell.

Q. Just answer the question. Do you still have it?

A. No, sir; I don't have it.

Q. Do you know where it is?

A. No, sir, I don't.

Q. When you left town you had it with you?

A. No, sir, I didn't.

Q. You had it on the night of the 28th of March, 1947?

A. I had it until Chief Mitchell called in for the cards, and then we were not allowed to carry a gun; we were not allowed to have a police permit. If I had been walking around with it I would have been arrested.

Q. You personally never returned the gun to its owner?

A. Oh, yes; he picked it up, Chief Williams.

Q. How do you know that?

A. How do I know he picked up my gun?

Q. Yes.

A. I handed him the card and my gun, I had to.

Q. What day was that?

A. I don't remember the date, but it was the day
454 that this man made the complaint and we were ordered to leave town over the weekend; we were gone over the weekend.

Q. You were gone?

A. Yes. That was orders. Mr. Williams drove us outside of the city limits. Mr. Perry was there, and Mr. Bombaci also. As a matter of fact, I will show you the cottages out there we stayed at.

Mr. Boardman: No further questions.

REDIRECT EXAMINATION

Q. (By Mr. Botts) Mr. Giroux, you have stated that when you made some statements which you now state were untruthful at the County Solicitor's office you did so because you were under threats and were in fear. Of whom were you afraid?

A. Chief Williams.

Q. Will you state why, what he had said or done that made you afraid of him?

A. Well, it was just the stories that went on. He used to pull out his gun all the time.

Q. Go ahead and state it, what threats he had made and why you were afraid of him.

A. He always carried that big '45 up in there (indicating). He was always bringing that out. He had another gun down in here (indicating). He was always whipping it around, and saying, "How would you like that shoved in you?" "How would you like to doublecross me?" I believe that was his final object, to instill fear in me. At the office Bombaci told me many times— he has even threatened me out here at the Latin Club one time he had connections here in town, and "If you ever doublecross me, or anything like that, it is just too bad." They kept that up constantly, and all the time he kept that gun on him, everywhere he went. Mitchell put in a complaint— this man put in a complaint and Chief Mitchell ordered those cards in. We drove out here, away out here near Hollywood, out on the beach there, and Chief Williams had two or three rifles in there and four or five revolvers and everything else; they were supposed to be over there. I didn't see no permit, but he carried them just the same.

455

Q. What in the nature of a threat did he make to you before you went up to the County Solicitor's office?

A. He told me what to say, and I just looked at him. He said, "I guess you know what is best for you, don't you?" Everyone of them over there, every one of them sat up there and said nothing happened. The Chief told me, "Everything is fixed. If you doublecross us you know what is going to happen." Mr. Yuhas sat up there and he said nothing happened; Bombaci said nothing happened. What chance did I have? I didn't have no money; I didn't have nothing. Just like I stated—this is God's truth—I waited until I got the money, until I could sell my father's ring, and my dad is dead—I naturally honor that ring—so I could leave town. I left. There is my wife to testify. Call her on the stand. She is pregnant. I know she will tell the truth. I left because I was in fear. When my wife knew I had part in this beating and things like that we very near were divorced. I left, and I hoped I would never see the outfit again.

456

Mr. Botts: That is all.

(Witness excused.)

A. R. LINDSLEY

was thereupon called as a witness on behalf of the Government, and having been first duly sworn, testified as follows:

DIRECT EXAMINATION

Q. (By Mr. Botts) State your name.

A. A. R. Lindsley.

Q. What connection do you have with the Dania Supply Company?

A. I am Chairman of the Dania Supply Company.

Q. Of the Board?

457 A. Yes, sir.

Q. What connection did you have in March, of 1947?

A. Chairman of the Board.

Q. In March, of 1947, what position did Mr. Yuhas hold with your company?

A. Mr. Yuhas was Comptroller.

Mr. Botts: That is all.

Mr. Roberts: One question.

CROSS EXAMINATION

Q. (By Mr. Roberts) Was he an officer of the corporation?

A. No, sir.

Q. A mere employee?

A. Yes, sir.

Q. Did he have anything to do with directing the policies of the company?

A. No, sir.

Mr. Roberts: That is all.

(Witness excused.)

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458 TOBIAS C. MATHEWS

was thereupon called as a witness on behalf of the Government, and having been first duly sworn, testified as follows:

DIRECT EXAMINATION

Q. (By Mr. Botts) State your name.

A. Tobias C. Mathews.

Q. How are you employed?

A. I am Special Agent of the Federal Bureau of Investigation.

Q. How were you employed in March, of 1947?

A. I was at that time also a Special Agent of the Federal Bureau of Investigation, assigned to the Miami office.

Q. Did you have any part or connection with the matter of investigating the case which is now on trial?

A. I investigated the case.

Q. In the course of your investigation did you interview Mr. Williams and Mr. Perry?

A. I did.

Q. Did they, or either of them, give you any information as to whether or not they were special police officers?

Mr. Dressler: I object to that on the ground it is not the best evidence and it is hearsay as to the matter of
459 official authority.

Mr. Marsh: I object to it further unless the time is shown when this is supposed to have been made.

The Court: I think the time is relevant.

Mr. Botts: If he answers it "yes", then I will go into the time. If he answers it "no", then there is nothing to go into.

The Court: I will overrule the objection.

The Witness: In May—

Mr. Botts: Just a minute.

Q. Just answer that. Did they make any statements?

A. Yes.

Q. Will you state when that was, and the circumstances? Describe the time and place when this occurred, as near as you can.

A. Mr. Williams—

Mr. Marsh: I object to any answer except as to the time and place.

The Witness: As to Mr. Williams, it was in May, 1947.

The Court: Wait a minute. This is running in my mind, as to whether the statements to which you refer were freely and voluntarily made.

Mr. Botts: You Honor, there is a presumption that
460 it is until it is shown to the contrary.

The Court: What is the question, about the time and the place?

Mr. Botts: They asked me to lay the time and place when they had this interview, and that is what he is doing at this time. Then I will ask him another question.

The Court: I think he is entitled to the time and place.

Mr. Botts: Certainly; most assuredly.

The Court: All right. I sustain the objection on that ground. Let him lay the time and place now.

Mr. Botts: That is what he was in the course of doing; that is what I thought, at least.

The Court: Let's get a direct answer to the uestion.

Mr. Marsh: I misunderstood the witness. I thought he was

going to launch into an answer that I thought was not going to be responsive. He was asked the time and place. I have no objection to his answering that question.

Q. (By Mr. Botts) All right, Mr. Mathews, will you kindly cover the question, the time and place when you had the interview with Mr. Williams, and the time and place, if it was different, when you had the interview with Mr. Perry?

A. Mr. Williams was May, 1947, in our office in
461 the Biscayne Building, that is, the FBI office in the Biscayne Building the twelfth and thirteenth floor. As to Mr. Perry, as well as I can recall, it was in June, of 1947, at the same place.

Q. At the time you have mentioned with respect to Mr. Williams, did you question him as to whether or not in March, of 1947, he was the holder of a special police card?

Mr. Marsh: I will object to any conversation on behalf of my client; I will object to any conversation between this witness and Williams or Perry as being hearsay, and it being impossible to have any connection with the alleged conspiracy in this cause, any admissions or conversations having taken place several months or, at least, a month or so after the alleged events.

Mr. Boardman: I would like on behalf of the Defendant Perry to submit the further objection it is not the best evidence.

Mr. Dressler: On behalf of the Defendant Williams, who I represent, who was questioned as to his authority, that is not the best evidence, what a man says about himself. His official authority is a matter of public record and readily obtainable, and not by hearsay testimony.

The Court: The only matter I am interested in there
462 is whether the alleged conspiracy had ended.

Mr. Botts: If the Court please, if they would not just get so excited about a preliminary question, they will find that it will be entirely material.

Q. At that time did Mr. Williams show you a special police card?

A. He did.

Q. When was it dated?

The Court: Wait a minute. We have got some objections.

Mr. Dressler: I object to that on the ground that the police card itself is the best evidence; secondly, that this happened long after the consummation of the alleged conspiracy and, therefore, it is also inadmissible. There is a place where that card is deposited and it should be obtained and not through any alleged admissions made or by hearsay, and the card itself not brought into court.

Mr. Botts: If the Court please, as counsel here in the other case, they would know so far as we know that card is not in existence today. This is the best evidence we can produce.

Mr. Dressler: That is Mr. Botts' statement. The authority who is supposed to have issued it, or someone, should show that has been destroyed. I don't know that. There is a record of these things.

The Court: The question is whether or not he showed
463 him a police card?

Mr. Botts: Yes, sir.

Mr. Marsh: The question was the date.

Mr. Botts: He said he showed him a police card. Then I was going to ask him the date of the issue of that police card. That would show whether or not he was in possession of a police card that was currently in force as of March, of 1947.

The Court: As to the matter of whether the conspiracy continued or not, that is for the jury to determine from all the evidence. I will overrule all objections and let him answer.

The Witness: The card Mr. Williams showed me was the card of a special police officer.

Q. (By Mr. Botts) Issued by whom?

A. Issued— It was signed by the Chief of Police and also the Director of Public Safety, Chief Mitchell being Chief of Police.

Q. Of what city?

A. The City of Miami. The date of validity on Mr. Williams' card was from January, of '47, to June, of '47. As to Mr. Perry— Mr. Williams' card number was 403-T—the letter first, T-403. As to Mr. Perry, Mr. Perry's card was T-404. The date of validity on his card was from January to June, of '47.

464 Q. You have been in court and have heard some questions asked about this socalled paint shed, sometimes referred to as the paint shack, on the premises of the Lindsley Lumber Company, or the Dania Supply Company, doing business as the Lindsley Lumber Company, at about 3810 Northwest 17th Avenue. In January of this year did you visit the premises of the Lindsley Lumber Company?

A. I did.

Q. For the purpose of examining the particular building I have referred to?

A. It was.

Q. Did you contact some individual in the office of the Lindsley Lumber Company to secure permission to make the examination?

A. I did. I went to the office and went up on the second floor of the Lindsley Lumber Company office, right opposite the lum-

ber yard, and asked to see Mr. Will Lindsley. Mr. Lindsley was out at that time, but I told the gentleman I wished to examine the shack, and he accompanied me, and we went to the paint shed. While I was in the vicinity of the paint shed the first gentleman—I don't recall his name—a gentleman appeared that I do know. Mr. Flagley, of the Lindsley Lumber Company, appeared while I was there examining the shack, pursuant to Mr. Botts' instructions.

465 Q. I will ask you whether or not you made any measurements of that building?

A. I did.

Q. Do you have—

A. I made a rough draft.

Q. Do you have with you the notes or memorandum you made at that time?

A. I do.

Q. Can you tell us what was the north and south measurements of the part of that building nearest the street?

Mr. Roberts: We object to this line of testimony on the ground that the witness is not qualified in this line of questioning, and on the ground it affirmatively appears that the measurements and inspection of the premises were made in January, of 1949, lacking two months of two years from the time of the commission or the alleged commission of the alleged offense on the premises, during which time it is quite possible that the promises may have changed in one way or the other; that would not be a good criteria as to the condition of the premises in March, 1947, what this witness found in January, 1949. For that reason, unless the witness can say of his own knowledge what he knew the condition of the premises to be in

466 March, of 1947, we object to any testimony along that line.

Mr. Botts: If the Court please, we can't prove everything at once. I propose when this witness gets through to put on Mr. Lindsley, the man that sits there, and let him tell whether that building is the same size and shape as it was. We will connect it up.

The Court: I think that should be done first. I think you better withdraw Mr. Mathews and put Mr. Lindsley back. I think that ought to be done first.

Mr. Botts: All right.

Mr. Dressler: I would like to make a motion to strike his testimony as to the card on the same grounds I stated. He testified orally without any written memorandum, from memory, as to what he remembers at this time from an alleged inspection of a card.

Q. (By Mr. Botts) I will ask you some questions about that. Did you make notes or memoranda of the information on that card?

A. I did.

Q. Have you refreshed your memory from your reports?

A. I have.

Q. Do you know that that information is correct?

A. That is.

Q. To whom did you return those cards when you had
467 had finished with them?

A. They were returned to their holders.

Q. You mean to Mr. Williams and Mr. Perry, respectively?

A. To Mr. Williams and Mr. Perry.

Q. Do you know where they are now?

A. I do not.

Q. Do you have them in your possession?

A. I do not.

Mr. Dressler: I still maintain that is not the best testimony. It is hearsay.

Mr. Boardman: I join in that motion, too, on behalf of the Defendant Perry.

Mr. Marsh: I join in the motion, too, on behalf of Sergeant Ford.

The Court: The motions are denied.

Mr. Botts: You may step down just a minute. I will call Mr. Lindsley back.

(Witness withdrawn)

A. R. LINDSLEY

was thereupon recalled as a witness on behalf of the Government, and having been previously sworn, testified as follows:

DIRECT EXAMINATION

Q. (By Mr. Botts) You are familiar with the build-
468 ing that is referred to as the paint shed or paint shack out there on your premises?

A. Yes, sir.

Q. Were the physical dimensions of that building changed in any way from March, of 1947, until January, of 1949?

A. Yes; the ground around it was filled.

Q. I didn't say that. I said the physical dimensions of the building.

A. No.

Q. Were there any structural changes in the building itself?

A. Yes, sir.

Q. What were those changes?

A. Opening of doors in the back, and some remodelling inside.

Mr. Botts: That is all.

CROSS EXAMINATION

Q. (By Mr. Roberts) You said something about the ground being filled in?

A. Yes, sir.

Q. What was that?

A. The ground was raised a considerable height. We were bothered considerably with water standing on the ground around there, and we had men come out and fill in
469 about six inches with rock, and paved the rock afterwards.

Mr. Roberts: That is all.

(Witness excused)

TOBIAS C. MATHEWS,

a witness called on behalf of the Government, thereupon resumed the witness stand and further testified as follows:

DIRECT EXAMINATION
Continued

Q. (By Mr. Botts) I will ask you, did you measure the front dimensions of that structure in January, of this year?

A. I did.

Q. What was the width, corner to corner, over-all in January, of this year, of that building?

A. The width of the building, that is, one side of each end, was 142 inches.

Q. That would be eleven feet ten inches. All right.

A. The length of the building was thirty-six feet four inches.

Q. What was the door in the street end of that building?

A. The door in the end of the building, which is
470 that end of the building facing toward 17th Avenue, is a regular wood panel door. At the other end of the building, a new type of—

Q. I don't think we are concerned with that, because there is some testimony that may have been changed.

A. The sides?

Q. What openings, if any, were in the side of the building, that is, the south side?

A. On the south side of the building there were four windows.

Q. What was the height of those windows from the floor?
A. Approximately forty-eight inches.
Mr. Botts: That is all.

CROSS EXAMINATION

Q. (By Mr. Marsh) How high was the bottom of those windows from the ground?
A. Well, the window itself was forty-eight inches from the floor, and the floor of the building itself is approximately twenty-four inches from the ground. The building itself rests on concrete. I don't know whether they are blocks or not.
Q. Blocks or piers, something of that kind?
A. Right.
Q. Do you know how high, then, the bottom of the window is from the ground level?
471 A. From the ground?
Q. Yes.
A. Well, that would be approximately six feet.
Q. When you made your measurements the ground was filled in and there was paving?
A. As is the present condition, yes.
Mr. Marsh: No further questions.
Mr. Botts: That is all.
Q. (By Mr. Roberts) Did you observe the lighting system in the place?
A. At the present time, es, I did.
Q. What was it?
A. At the present time there seems to be a circuit around the wall, in which you can place plugs. I recall distinctly that portion of the lighting system.
Q. What about overhead lights?
A. Let me see if I have it. There are four drop lights, one fluorescent light, and there was a light over a desk. There were approximately, I think, eight wall sockets circled around the sides.
Q. Is there an outside light, did you notice?
A. There is a light at the end towards 17th Avenue.
Q. (By Mr. Marsh) That is over the front door, isn't
472 it?
A. Over the door that faces towards 17th Avenue, I would call it, yes.
Mr. Marsh: That is all.
Mr. Botts: Come down.
(Witness excused)

Mr. Botts: By agreement with counsel it is stipulated that the defendant Ford at the time of the incidents in question was a police officer of the City of Miami, and that he is now a Sergeant of Police.

Mr. Marsh: That is correct.

Mr. Botts: The Government rests.

GOVERNMENT RESTS

The Court: We will recess until 9:15 tomorrow.

(An adjournment was then taken until 9:15 o'clock a.m. tomorrow, Thursday, April 21, 1949.)

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Miami, Florida,
Thursday, April 21, 1949.

The above-entitled cause came regularly on for trial before the Honorable John W. Holland, United States District Judge, and a jury, duly impanelled and sworn to try the same, in open court, at Miami, Florida, on Thursday, April 21, 1949, at 9:15 o'clock a.m., pursuant to adjournment on yesterday, April 20, 1949.

APPEARANCES:

Fred Botts, Assistant District Attorney, on behalf of the Government.

A. C. Dressler, Esq., of the firm of Riley & Dressler, on behalf of Defendant Jay G. Williams.

Robert L. Floyd, Esq., and Edward F. Boardman, Esq., on behalf of Defendant Joseph V. Perry.

Defendant John S. Bombaci, appearing in his own behalf.

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John D. Marsh, Esq., on behalf of Defendand Charles R. Ford.

Ernest E. Roberts, Esq., and Edwin E. Strickland, Esq., on behalf of Defendants Andrew J. Yuhas and Dania Supply Co., d.b.a. Lindsley Lumber Co.

The Court: Mr. Clerk, will you poll the jury.

(The Clerk then polled the jury.)

The Court: Are we ready to proceed?
Mr. Roberts: We have some motions, if the Court please.
The Court: Let the jury retire.

(The jury then retired from the courtroom.)

MOTIONS FOR MISTRIAL AND FOR JUDGMENTS OF ACQUITTAL AND DENIAL THEREOF

Mr. Roberts: Come now all of the defendants in this cause and renew the motion that was made by them and statements contained therein at the opening of court yesterday, relative to the Court declaring a mistrial of this case because of the articles written in Miami newspapers during the pendency of this trial, and in further support of said motion we offer in evidence, that is, for the purpose of the motion and not for consideration of the jury, the front page of Section "C" of the Miami Daily News of Wednesday evening, April 20, 1949, particularly the portion of the periodical which is headlined "Mistrial pleas Overruled in Civil Rights Cases." That is the article that came out again in last night's paper, that
475 had the same information in it that we complained of yesterday morning's "Herald" and the Miami Daily News of the previous evening, that is, the 19th.

The Court: All motions are denied. I understand that was made on behalf of all defendants.

Mr. Roberts: Yes, sir; it is the same motion as made yesterday.

The Court: You may file that, Mr. Clerk, but it is not to go to the jury room.

(The article appearing in the Miami Daily News of April 20, 1949, was thereupon marked "Defendant's Exhibit C".)

Mr. Dressler: I wish again to renew the motion for mistrial which I made on behalf of the Defendant Williams as to the multiplicity of indictments, including the perjury indictment, which is covered by Grounds 9 and 10 of a motion for judgment of acquittal which we are filing in a few minutes, and I renew the motion.

The Court: That was a motion, now— What was that?

Mr. Dressler: That was a motion which I had made complaining of the multiplicity of suits filed against this defendant and the other defendants growing out of this same transaction, in which I enumerated by number the cases which are now or have been lately pending in this court, the result of which tended to exhaust the funds of these defend-
476 ants over a long period of time in defense of the trial of the actions, and also reference thereto to case No.

7333, the perjury indictment of 222 pages, which I claim had and intended to result in the fact that my client was so coerced and intimidated by the multiplicity of indictments, plus, as we claim, the unwarranted perjury charges that he is forced not to take the stand in fear of further perjury prosecutions, unfounded perjury prosecutions.

The Court: What is that?

Mr. Dressler: We claim unfounded perjury prosecutions, as we claim that the denial made by Williams was as broad as the charge of perjury and as broad as the charge of the offense against him.

The Court: All right. The motion is denied.

Mr. Marsh: I wish to present a motion for judgment of acquittal in the case of the Government against Charles R. Ford. I wish to submit in support of the motion the jury charge in the trial of Case No. 7265-M-Criminal, United States of America versus Jay G. Williams, et al. I also wish to offer in support of the motion the indictment in Case No. 7279.

Mr. Botts: If the Court please, they refer to the previous trial. I believe the reporter has given it the number 7265, which is not the applicable number. I make no point
477 of that. I concede that is a correct copy of the charge given by Judge Barksdale.

Mr. Marsh: Also in support of the motion I submit a copy of the indictment in Case No. 7279, and I understand that it is stipulated that this is a true copy; is that correct?

Mr. Botts: Counsel informs me, and I have no reason to doubt it, that this is a copy that was furnished one of the defendants of that indictment. I have spoken to the gentleman about it; it seems that the court file is up in Virginia and they could not get a certified copy. If there should happen to be any typographical errors, they may be corrected at any time from the record, and it may have the same force and effect as if it had been certified. I do not concede the materiality, but as to the correctness of it, I concede that with the reservation if it should happen that there was a typographical error that was not corrected before it was handed to them, they may correct it at any time.

The Court: Mr. Dressler, your motion was a renewal of the motion you made yesterday?

Mr. Dressler: That is all.

The Court: There is nothing new in it?

Mr. Dressler: No, sir.

Mr. Marsh: I also offer in support of the motion
478 for a judgment of acquittal a certified copy of the jury's verdict in Case No. 7279, which copy is at-

tached to the Defendant Ford's Motion for Leave to Amend his Motion to Dismiss.

Mr. Floyd: Will you please let the record show that the Defendant Joseph V. Perry joins in the motion now just made by Defendant Ford.

Mr. Botts: You mean you adopt that?

Mr. Floyd: Yes; we adopt that.

Mr. Botts: You adopt that in behalf of your client?

Mr. Floyd: Yes, sir.

Mr. Botts: All right.

Mr. Dressler: Let that be true as to Mr. Bombaci, who also adopts it.

Mr. Roberts: The Defendants Yuhas and Dania Supply Company will adopt any and all motions pertaining to a mistrial or a directed verdict of not guilty made by any of the other defendants.

Mr. Botts: In order to clarify the issue, I am willing to concede that each and every motion made by whatever defendant may be applicable to each and every other defendant, whether they formally adopt them or not. I am willing for them to have the benefit of them, so I hope that will clarify the situation.

Mr. Dressler: Will the Court allow us to so stipu-
479 late?

The Court: Yes, sir.

Mr. Marsh: In support of this motion, if the Court please, I submit that first of all there has been no evidence whatsoever shown to this jury to indicate to them that these defendants were acting under this socalled color of law. The testimony shows conclusively that these prosecuting witnesses, if they were restrained, were restrained by reason of their employment; they reported voluntarily and they were not held by reason of anyone indicating authority of law.

Mr. Dressler: Before we get into the argument, may I file another motion.

The Court: The Clerk asked a question there. What is your question?

The Clerk: I wanted to know whether these are to be marked in support of that motion.

Mr. Botts: I object upon the ground they have no materiality. I have stated my position.

The Court: I will overrule the objection as to materiality and let them be filed. They do not go to the jury; they are just in support of the motion.

Mr. Marsh: Yes, sir; that is the only purpose.

Mr. Dressler: May these also apply to my motion
480 to dismiss? I refer to them in my grounds; that is, the verdict of the jury and the indictment.

Mr. Botts: I am agreeable to that procedure.

The Court: That is agreeable.

(The copy of indictment in Case No. 7279-M-Criminal was thereupon marked "Defendants' Exhibit D.")

(The copy of Verdict of the Jury in Case No. 7279-M-Criminal was thereupon marked "Defendants' Exhibit F.")

(The copy of Court's Charge to the Jury in Case No. 7279-M-Criminal was thereupon marked "Defendants' Exhibit E.")

The Court: Is this another motion you are presenting now?

Mr. Dressler: Yes, on behalf of the Defendant Jay G. Williams, at the end of the Government's case, for judgment of acquittal.

(Mr. Dressler thereupon filed the following written motion:)

"At the conclusion of the Government's case, after all of the evidence for the prosecution has been offered and after the United States District Attorney had announced that the Government rests, Jay G. Williams, one of the defendants herein, by and through his undersigned attorney, moves
481 that the Court will order a verdict of not guilty as to him on each count of the indictment herein for the following reasons and upon the following grounds:

"1. The Government has failed to establish, by competent evidence, that this defendant is guilty of the offense charged.

"2. The Government has failed to prove by competent evidence that this defendant participated in a conspiracy having as its object the commission of the acts alleged in the indictment.

"3. The Government has failed to prove that this defendant conspired with any of the others named in the indictment to wilfully deprive the complaining witnesses, or any of them, of the rights alleged in the indictment to be guaranteed by the Fourteenth Amendment to the Constitution of the United States.

"4. It does not appear from the evidence adduced by the Government that this defendant conspired with the others named in the indictment, or any of them, to commit the acts alleged in the indictment while acting under any color of law of the State of Florida.

"5. That there is not sufficient evidence to warrant his conviction of the alleged conspiracy.

"6. The Government has failed to prove facts sufficient to constitute a prima facie case of the alleged conspiracy.

482 "7. The Governmnt has failed to prove by competent evidence that the defendant committed any of the acts alleged in the indictment while acting under any color of the laws of the State of Florida.

"8. The Court abused its discretion in refusing the joint motion of the defendants that the jury be polled separately and examined as to whether or not they had each read the newspaper articles in The Miami Herald and The Miami Daily News appearing therein after the jury had been empaneled and sworn and whether or not they each had as a result thereof, if said articles were so read by any of them, formed an opinion that could be passed upon as a matter of law by the Court as to any prejudice therefrom resulting as to this defendant, or any other defendant.

"9. That this defendant was not afforded due process of law under the Constitution of the United States because of the multiplicity of indictments filed against him by the Government based on the transactions and same alleged offenses shown in the indictment herein, including the filing of perjury charges against this defendant in Case No. 7333 of this Court, and the Court abused its discretion in not declaring a mistrial herein as to this defendant, who has already been sentenced to a four year term in Case No. 7279-M-Criminal of this Court.

483 "10. That this defendant was not afforded due process of law under the Constitution of the United States by the filing of unwarranted perjury charges against him in Case No. 7333 and resulted in coercing the defendant not to make any defense herein for fear of further perjury charges being filed against him by the Government in any attempt to defend himself in the instant case." (Signed) "A. C. Dressler, Attorney for Defendant Jay G. Williams."

Mr. Botts: One was a motion for mistrial; the other is a motion for judgment of acquittal, as I understand it.

Mr. Marsh: Both of these are motions for judgments of acquittal.

Mr. Botts: Mr. Marsh's is a motion for judgment of acquittal.

The Court: All right.

(Mr. Marsh thereupon filed the following written motion:)

"At the conclusion of the Government's case, after all of the evidence for the prosecution has been offered and after the United States District Attorney has announced that the Government rests, Charles R. Ford, one of the defendants

herein, by and through his undersigned attorney, moves the Court for a judgment of acquittal for the following reasons and upon the following grounds:

"1. The Government has failed to establish, by com-
484 petent evidence, that this defendant is guilty of the offense charged.

"2. The Government has failed to prove by competent evidence that this defendant participated in a conspiracy having as its object the commission of the acts alleged in the indictment.

"3. (Stricken Out.)

"4. The Government has failed to prove that this defendant conspired with any of the others named in the indictment to wilfully deprive the complaining witnesses, or any of them, of the rights alleged in the indictment to be guaranteed by the Fourteenth Amendment to the Constitution of the United States.

"5. It does not appear from the evidence adduced by the Government that this defendant conspired with the others named in the indictment, or any of them, to commit the acts alleged in the indictment while acting under any color of law.

"6. By evidence which varies in no material respect from that which has been adduced at this trial by the Government, this defendant was acquitted by a competent jury of this Court in Cause numbered 7279-M-Cr. of the offense which is charged as the act which was the object of the alleged conspiracy.

"Not only was this defendant found not guilty of
485 actually committing the act so alleged but, under the Charge to the Jury delivered by the Court in the trial of that cause, this defendant was also found not guilty of aiding, abetting, encouraging, counseling, commanding, inducing, procuring, or in any way assisting any other person to commit that act.

"In the trial of this cause, the Government has failed to offer any evidence which would add materially to that offered in the previous trial above-mentioned or which would tend to further prove participation by this defendant in the commission of the act, which is alleged as the object of the conspiracy charged, or which would tend to prove that this defendant aided, abetted, encouraged, counseled, commanded, induced, procured, or in any way assisted any other person to commit that act.

"Having once been acquitted by a competent jury of this Court of complicity in the commission of the substantive act here charged, upon evidence which is in all material respects the same as that adduced here, any verdict in this cause, other

than one of not guilty, would be inconsistent with the verdict rendered at the previous trial above-mentioned and it is respectfully suggested that the matters submitted here by the Government have already been adjudged to be in favor of this defendant and against the Government and are res judicata. Respectfully submitted," (Signed) "John D. Marsh, Attorney for the defendant, Charles R. Ford."

486 Mr. Marsh: If the Court prefers, I will read the motion; if not, I will argue the grounds I have set forth in the written motion I have filed with the Clerk.

(Argument to the Court.)

The Court: We will be in recess for a few minutes.

(A short recess was then taken, after which the following prcoeedings took place without the presence of the Jury:)

The Court: Each and every of the motions is and are denied. Are you ready to proceed?

Mr. Marsh: Yes.

The Court: Bring the jury in.

(The jury then returned to the jury box.)

487

DEFENDANTS' EVIDENCE

H. LESLIE QUIGG

was thereupon called as a witness on behalf of the Defendants, and having been first duly sworn, testified as follows:

DIRECT EXAMINATION

Q. (By Mr. Marsh) State your name.
A. H. Leslie Quigg.
Q. Where do you live?
A. I live at 1837 Southwest 23rd Street, City of Miami.
Q. What is your age, please?
A. My age is sixty-one.
Q. How long have you lived in the City of Miami?
A. Since 1900.
Q. What is your occupation, please?
A. At the present time City Commissioner.
Q. Do you know the defendant Charles R. Ford, or Roy Ford?
A. Yes, sir; I do.
Q. By what name is he usually known?
A. Roy, I believe.
Q. How long have you known him?

A. He joined the Department sometime in December, 1939.

488 Q. Will you please tell us what your association with him has been, in what connection it has been?

A. Well, I served as Chief of Police fifteen years. I got out two different times. The last time I went back in '37. He joined the Department in '39. He worked as Patrolman, and was assigned most of the time to the Bureau of Identification.

Q. Do you know what his occupation is now?

A. Well, I don't know what his title is. He is in the Miami Police Department. I think he is a Sergeant.

Q. Do you know how long he has been in the Department?

A. Since December, '39.

Q. Has that been continuous, all of that time?

A. So far as I know, excepting the time he went overseas, something close to two years, or something like that.

Q. During the last war?

A. Yes, sir.

Q. Will you answer this next question that I ask you either "yes" or "no". Do you know the reputation of Charles R. Ford in the community in which he lives, as to being a peaceable and law abiding citizen?

A. I do.

Q. Is that reputation good or bad?

489 A. I would say it is good.

Mr. Marsh: Thank you. You may inquire.

Mr. Botts: No questions.

(Witness excused)

WALTER HEADLEY

was thereupon called as a witness on behalf of the Defendants, and having been first duly sworn, testified as follows:

DIRECT EXAMINATION

Q. (By Mr. Marsh) State your name.

A. Walter Headley.

Q. Will you please state where you live?

A. 1176 Southwest 20th Avenue, Miami.

Q. What is your occupation?

A. Chief of Police.

Q. Of the City of Miami?

A. The City of Miami.

Q. How long have you lived in Miami, Dade County?

A. With the exception of two years, since 1923.

Q. Do you know Charles R. Ford as Roy Ford?

A. Yes, I do.

Q. How long have you known him?
A. Since he has been connected with the Department, 1939.
490 Q. Will you please state what his present employment is?
A. He is a Sergeant of Police.
Q. Has that employment been continuous since 1939, do you know, or not?
A. He was promoted to Sergeant in October, of 1939. Prior to that he held various assignments in squad cars; most of the time connected with the Bureau of Identification.
Q. Has he worked in the Police Department all of that time?
A. With the exception of military leave, while he was in the Navy.
Q. Has he been suspended from the Force?
Mr. Botts: Wait a minute. I don't think that is the way to prove—
Mr. Marsh: I will withdraw the question.
Q. Will you answer the next question, please, sir, "yes" or "no". Do you know the reputation of Charles R. Ford in the community in which he lives as to being a peaceable and law abiding citizen?
A. Yes.
Q. Is that reputation good or bad?
A. Good.
Mr. Marsh: Thank you. You may inquire.
Mr. Botts: No questions.
491 Q. (By Mr. Marsh) Do you know his reputation as an honest and efficient officer in the community in which he lives?
A. Yes.
Q. Is that reputation good or bad?
A. Good.
Mr. Marsh: Thank you. You may inquire.
Mr. Botts: No questions.

(Witness excused)

JAMES O. BARKER

was thereupon called as a witness on behalf of the Defendants, and having been first duly sworn, testified as follows:

DIRECT EXAMINATION

Q. (By Mr. Marsh) State your name.
A. James O. Barker.
Q. Where do you live?
A. 2271 Southwest 20th Street, Miami, Florida.

Q. What is your occupation?

A. Chief of Detectives with the Miami Police Department, Miami, Florida.

Q. Do you know the Defendant Charles R. Ford, or Roy Ford?

A. I do.

492 Q. How long have you known him, sir?

A. Approximately ten years.

Q. What is his occupation?

A. At the present time he is Patrol Sergeant, assigned to the Radio Section of the Miami Police Department.

Q. How long has he been a member of the Miami Police Department?

A. Approximately ten years.

Q Do you know what his employment was in March, of 1947?

A. He was a patrolman, assigned to the Identification Bureau, as a technician.

Q. At that particular time, Mr. Barker, what was your employment in the Police Department?

A. Detective Captain, in charge of that particular division.

Q. Did Sergeant Ford work directly under you?

A. Yes, sir.

Q. I will ask you to answer this question "yes" or "no": Do you know the reputation of Charles R. Ford in the community in which he lives as to being a peaceable and law abiding citizen?

A. Yes, sir.

Q. Is that reputation good or bad?

493 A. Good.

Q. Do you know his reputation as an honest and efficient police officer?

A. Yes, sir.

Q. Is that reputation good or bad?

A. Good.

Q. Now, did you have occasion sometime in the latter part of March, 1947, to assign Mr. Ford to any particular task involving the Lindsley Lumber Company?

A. Yes, sir.

Q. Do you recall when that assignment was made?

A. Yes, sir.

Q. What date was that?

A. March 28th, 1947, in the afternoon.

Q. What was the reason, if you had one, for assigning him to that particular task?

Mr. Botts: I don't believe his reason is admissible. The fact I concede admissible, but why he did, conceivably, that could

involve quite immaterial matters and, I believe, would have no probative value. Whatever his reasons were, the fact is he has testified that he do so.

Mr. Marsh: May I ask a couple of questions before you rule?

The Court: You withdraw that question?

Mr. Marsh: I will withdraw it for the time being, yes, sir.

494 Q. On the 28th of March, 1947, what were Mr. Ford's duties in the Police Department?

A. He was assigned on the afternoon shift as a technician. However, on that particular day he was off duty.

Q. Did his assignment as a technician entail his going out of the station on work, such as investigating?

A. It is not the usual thing; only in emergencies.

Q. Did you assign him to that task because of something that you knew of your own knowledge, or because of some other reason?

A. Some other reason.

Q. Will you please state what that reason was?

Mr. Botts: If the Court please, that gets back to the same objection. He has said it was not of his own volition, it was for some other reason. I don't know what that is. Conceivably, it might be quite immaterial, and I can't see the materiality of it. It may be that the testimony would be entirely innocuous and of no probative force at all and of no weight. Conceivable, if I knew what the answer was, I might not object to it for that reason, but I don't think his reason is material. I think the material question here is "Was he assigned there". That, I concede to be material, and thereafter "What did he do pursuant to that assignment," if this witness knows that, that might conceivably be material, but the mental processes by which this officer arrived at the decision to assign a

495 particular officer under his control to a particular function, I can't see that his mental processes are material.

Mr. Marsh: I will assure the District Attorney that this answer will have nothing to do with mental processes; if it does I will enter into a stipulation to strike the answer. It goes directly to the charge in this cause. It has nothing to do with this witness' mental processes. We don't know, of course, until the witness is allowed to answer the question.

Mr. Botts: That is what I am fearful of.

Mr. Marsh: I can assure the District Attorney that that will not be.

Mr. Botts: On that assurance I will withdraw the objection, with some trepidation.

Q. (By Mr. Marsh) Why did you assign that police officer to this particular task?

A. At the request of the County Solicitor. I would like to correct that; the Assistant County Solicitor.

Q. About what time of the day did you receive that request, do you recall?

A. It was after I returned from lunch. I seldom return from lunch before one-fifteen. It was between that time and four p.m.

Q. Do you recall about when it was that you notified
496 Mr. Ford of the assignment?

A. It would have been shortly after I received the request, which, conceivably, could have been as late as five o'clock.

Q. Where was Sergeant Ford at that time?

A. He was at home.

Q. What was the state of the Department at that time? I mean by that, who was available to go on this particular assignment?

Mr. Botts: Objected to as immaterial.

Mr. Marsh: I submit, your Honor, that it is very material, to show how this police officer happened to go to this place. The Government has tried to show it in one way. I wish to show the other, what happened.

Mr. Botts: That he went there by reason of the direction of his superior officer I am willing to admit, but what the status of the Department was that moved the mental processes of this officer to select this particular man, I think is wholly immaterial. He has said that he selected him, and he ordered him. That is the material point. I submit it should go no further.

Mr. Marsh: I wish to bring to the attention of the jury that the selection of this particular officer had nothing to do with what has been testified here in this proceeding. I can do it only by asking this officer.

497 Mr. Botts: If that is the purpose, go ahead. I don't mind.

Q. (By Mr. Marsh) Why did you happen to select Sergeant Ford for this particular assignment?

A. We were short of men.

Q. Did you have any particular reason for selecting him?

A. Not at all, except that he was available and off duty.

Q. Do you know what his hours of employment were on the 26th and 27th of March, 1947?

A. We ran along about that time two different shifts. I think the shift was three p.m. until eleven p.m. It could have

been four until twelve, but I am of the opinion at that time it was three p.m. until eleven p.m., the afternoon shift.

Q. That was the trick he was working?

A. Yes, sir.

Mr. Marsh: Thank you. You may inquire.

CROSS EXAMINATION

Q. (By Mr. Botts) Did you say three to eleven or four to eleven?

A. Or four to twelve. We changed that along about that time; for a while we worked from four to twelve, and put it back up to three to eleven, the afternoon shift.

498 Mr. Botts: That is all.

(Witness excused)

OFFERS IN EVIDENCE

Mr. Marsh: I have no further evidence to offer.

Mr. Roberts: The defendants singly and severally offer in evidence a copy of the indictment rendered in this court in Case No. 7279. I have no extra copy, but one of the copies has already been filed in support of a motion, and I think that if the Court allows it to go into evidence we could use that same copy, which has been filed heretofore in support of a motion.

Mr. Botts: There is no objection to that procedure; of course, there is objection to the document.

Mr. Roberts: We also offer in evidence a certified copy of the verdict rendered in the same Case No. 7279.

Mr. Botts: We object to them. Both objections are they are immaterial, irrelevant, incompetent, and tend to prove or illustrate no material issue involved in this case.

Mr. Roberts: I understand, Mr. Botts, however, the fact that the indictment is not certified—

Mr. Botts: Not on that ground.

Mr. Roberts: Not on that ground?

Mr. Botts: Because the statement I made a while ago with reference to that applies still.

Mr. Roberts: That is right. We offer them in evi-

499 dence.

The Court: Let the jury retire to the hallway there.

(The jury then retired from the courtroom.)

COLLOQUY BETWEEN COURT AND COUNSEL

The Court: Mr. Botts, I feel that the jury ought to be fully advised in the difference between the conspiracy and the substantive matters.

Mr. Botts: That is a matter for a charge, then.

The Court: Well, I think that evidence ought to be in there so as to bring that out to the jury, to differentiate between the conspiracy and the substantive charge.

Mr. Botts: It is absolutely unthinkable that that can be admissible testimony in this case. Now, if the Court wants to use it in framing its charge that is all right, but to admit in evidence so that they can argue to the jury a question that is a question of law as to whether or not this is res judicata is absolutely unthinkable. There has never, I venture—I say this without the slightest hesitation. There never has been anywhere any time a decision upholding such a procedure, and if counsel can cite me such a case I will gladly withdraw that statement, but I just know it can't be done. To admit an indictment in another case and let the jury pass on questions of law—that is for your Honor. Now, conceivably, your Honor is quite within the proprieties to take that and examine
500 it and in view of that instruct on the law of the case; that is eminently proper. Personally, I can't see where it is especially material to charge what would be an offense under Section 52, because that offense is quite different from the offense now being charged. To illustrate what I mean—I don't have Section 52 before me, but it says if any person shall under color of the law of the State of Florida do something. Now, unless they act under color of law there is no offense under that statute. The present statute is very much broader, and it says if two or more persons conspire. They may be any persons. Now, it is true that in this case we charge that a part of the conspiracy was that they would at least in part act under color of law, but that does not bring in Section 52. It merely puts a certain burden upon the Government with respect to proof, that there was at least some color of law. But the violation of Section 51 may be by individuals having no official status or function. Now, I have forgotten the case, but it was an election case, I believe, out in Louisiana, if my memory serves me correctly—I may very likely be wrong about the location—in which there was a conspiracy by persons in no way connected with the Government or official functions to intimidate a certain class of citizens and prevent them from voting in a Congressional

election, and that was held to be a violation of Section
501 51, though there was no action under color of law;
therefore, they are entirely different. Now, the only connection between the two is that in this particular case the civil rights sought to be taken away from the victims were identical in respect to the conspiracy and in respect to the alleged action under color of law, which is not present in this case. That is the only connection between the two. Now, in charging in this case the Court will naturally consider the civil rights of which it is alleged these persons were deprived. The fact that those are the same civil rights described in the other section is merely incidental, because there might be, in addition, other civil rights. There are many other civil rights that are protected by this section. I can't see why it is material for the Court in this case to describe what would be an offense under Section 52, which is not on trial. The Court's function is merely to determine what is the offense here, and it is purely a matter of law, and if this evidence should be admitted in trial it will be as clearly wrong as it could possibly be, and will bring into this case an issue that is entirely foreign to the issue on trial; that is whether or not they were guilty under Section 52. Now, as to their guilt under Section 52, that matter has been foreclosed; Williams has been determined to be guilty and the others have been determined to be not guilty. Now, regardless of whether or not I agree as
to the correctness of the conclusion of the jury as to
502 the guilt of these other defendants under Section 52, which I think it is conceded I do not agree with that verdict, and after talking to five of the jurors I am dead certain that had they understood the law there would have been a different verdict, because they assigned to me the reason, which was wholly a misunderstanding of the law, is this Court going to come in here now and permit an attempt to be made to confuse this jury about the same thing? The Court, on the contrary, should carefully keep that confusing issue away in order to be certain that it does clarify the issue in this case, which is: Was there a conspiracy to deprive these persons of the five named civil rights, or any one of them. That is the issue, and this would inject an issue that is wholly foreign. The Court will realize that in this and cases of this kind, as in every other criminal case, should the Court make a grievous error, as I conceive this to be, the Government is wholly helpless for remedy; we can't appeal; we can't do anything about it; we just have to suffer. Now, on the contrary, I am dead certain it would not be error, and I will be quite happy to give them the benefit of a claim in the Court

of Appeals, should they be convicted, that this is error, because I know it is not, and I am willing to stake my whole case on the correctness of that position, but if it should, perchance, on a long chance, be error, they have an error
503 in the record, which the Court of Appeals can correct and we can't; the damage is done, irrevocably done, if that is put in there and it is wholly foreign. The Court should and must charge this jury on the law, and it should not and must not leave that question of law to the jury to interpret the force and effect, if the Court please, of an indictment and of certain questions in that indictment.

Mr. Marsh: May it please the Court, I would not presume to tell this Court what it must do in this trial, but I will suggest to the Court that the prosecution is playing hot and cold on this question of color of law.

(Argument to the Court.)

The Court: I am going to take a few minutes' recess.

Mr. Marsh: Would your Honor want us to submit the charges we have now?

The Court: No.

(A short recess was then taken, after which the following proceedings were had without the presence of the jury:)

The Court: The objection is sustained. I will ask you gentlemen to remember that in your requested charges; with reference to the matters involved in the exhibits tendered try and cover that in your requested charges. Do you want them identified?

Mr. Roberts: I would like to have them identified.
504 The Court: Let them be identified, but their admission into evidence is denied.

(The copy of verdict in Case No. 7279-M-Criminal was thereupon marked "Defendants' Exhibit No. 6 for Identification.")

(The copy of Indictment in Case No. 7279-M-Criminal was thereupon marked "Defendants' Exhibit No. 7 for Identification.")

The Court: Let the jury come in.

(The jury then returned to the jury box.)

Mr. Roberts: The defendants rest.

Mr. Botts: I would like to have a formal announcement, because Mr. Roberts only represents two of the defendants. I would like to have a formal announcement.

Mr. Floyd: The Defendant Joseph V. Perry rests.

Mr. Marsh: The Defendant Charles R. Ford rests.

Mr. Dressler: The Defendant Jay G. Williams rests, and I will state also, on behalf of Mr. Bombaci, that the Defendant John S. Bombaci rests.

The Court: Mr. Bombaci, you rest, do you?

Mr. Bombaci: Yes, sir.

DEFENDANTS REST.

Mr. Botts: The Government rests.

TESTIMONY CLOSED.

505 The Court: There are some requested charges to be submitted. I will have to examine them. Have you gentlemen exchanged copies of all of these?

Mr. Botts: No, sir. The charges that I am going to request are still in process of being written. They will be ready by afternoon, by after lunch, but they are not completed yet; I mean, they are completed, but with some typographical errors, which have to be corrected. They will be ready in half an hour or such a matter.

The Court: I will take a recess. While I am doing this I want you to exchange copies. Can you get them to me by a quarter past twelve, do you think?

Mr. Botts: I doubt it.

The Court: Twelve-thirty?

Mr. Botts: The girl is working on them now. There are several pages to be re-written, where there were typographical errors. May I suggest that doubtless it will be tomorrow before we will be ready for charges, because there is still the matter of argument.

The Court: No. I have got to have the charges and advise counsel before the argument on what the position of the Court is.

Mr. Botts: Oh, yes; I remember that rule.

The Court: I must get all requested charges and make progress with the case now.

506 Mr. Botts: I think within thirty minutes they could be ready. If I could be excused to go in there and supervise what they are doing, I think within thirty minutes.

The Court: Let us tender the others. Are there any other requested instructions?

Mr. Floyd: I would like to have announced for the record that the Defendant Joseph V. Perry joins in and adopts each and every requested charge on behalf of every defendant as his own, which is applicable to him.

Mr. Dressler: May that apply to every defendant in the case? Could it be so stipulated?

The Court: All written requests on behalf of any defendant are submitted on behalf of each and every defendant.

Mr. Floyd: Where the same is applicable.

The Court: All right. Let me have them all now.

Mr. Botts: If the Court please, I hand you a copy of my requested charges, together with a copy of Judge Barksdale's charge. They could not make enough copies for me to give to individual counsel a copy of these charges. Would you gentlemen be willing to accept two copies of these charges for all of you?

The Court: What about Mr. Bombaci? Have you given him one?

Mr. Bombaci: I will read his.

The Court: What about this? You are submitting this. What about a copy of this to them?

507 Mr. Botts: They had a copy. They handed a copy to your Honor. This is an exact copy of the copy that they filed in evidence in this case, but that was pencilled up to show alterations in text to eliminate certain issues not in issue here.

The Court: Have you incorporated that Judge Barksdale charge in these you have submitted?

Mr. Botts: That which is being submitted is a copy of Judge Barksdale's charge, eliminating those matters that are not conceived to be in issue. I merely hand you a copy of his charge for purposes of comparison only, if your Honor wanted to check it. I have only one copy, but they have copies.

The Court: All of the counsel have, is that right, a copy of this Judge Barksdale charge?

Mr. Botts: One has been filed in evidence and is available here.

The Court: I don't know just how far I want to look at this.

Mr. Botts: I don't know whether you want to look at it at all, but since this is based upon that, I thought your Honor might want to glance through it for purposes of comparison, and so forth.

The Court: Do you gentlemen have any objection to
508 the Court using this Judge Barksdale charge, that is, in looking at it in connection with making up or formulating the Court's charge or passing upon any requests?

Mr. Roberts: We have no objection to your Honor using it in any way it might assist you. You mean in formulating his own charge?

Mr. Botts: Yes.

Mr. Roberts: No.

The Court: Or in passing upon any requested charges?

Mr. Botts: That would be in formulating your own charge.

Mr. Roberts: No, we have none at all.

The Court: Let me get an expression from each counsel and Mr. Bombaci on that.

Mr. Bombaci: I don't have any objection.

Mr. Dressler: No objection.

Mr. Marsh: I have no objection at all, and would ask that the Court consider as submitted by me as a request the charge Judge Barksdale gave in that so far as it deals with character witnesses. Do you have any objection to that?

Mr. Botts: No. I thought it was very good. I haven't incorporated that in mine. I have no objection to using the exact language Judge Barksdale used with reference to the question of character witnesses.

The Court: Did I have an expression from Mr. Floyd?

509 Mr. Floyd: The Defendant Perry was very fortunate under those charges. I would be happy to have the Court consider those charges.

Mr. Dressler: I have no objection to the Court taking the charges and reading them.

The Court: Have all counsel spoken now? (No response) It will take me sometime to go over these. I am going to take a recess now until two o'clock. I will advise counsel with regard to the action of the Court at two o'clock, so it will be all right for the jury to be excused until two-thirty.

(The Government thereupon filed the following written requested charges:)

GOVERNMENT'S REQUESTED CHARGES

"The Court: Gentlemen of the Jury, we are now within sight of the end of the trial of the case of United States of America against Jay G. Williams, Joseph Perry, John S. Bombaci, Charles R. Ford, Andrew Yuhas, and the corporate defendant.

"You have heard the evidence in the case and the arguments of counsel, and there now only remains that I discharge my duty of declaring the law to you, and then that you retire to your room and determine from the evidence which you have heard, what the facts are in the case and apply the law as I shall give it to you in those facts, and render a true and just verdict.

"You have heard the matter of punishment mentioned once or twice by counsel and each time I have directed counsel
510 not to argue that question. I don't mean to imply to you that Federal Statutes do not provide punishment. Of course they do. The point only was this. Under the Federal system, the jury is not concerned with punishment. The duty and obligation of determining what, if any punishment should be imposed upon a person who has been found guilty is solely the obligation and duty of the Judge. The question of what punishment a person might get, if any, should not concern you. That is not a part of your problem. You have one very important duty, but only one. And your duty is to determine whether these defendants, or any of them, are guilty or not guilty. And when you find any one or more guilty, then the burden is on me to determine what further action should be taken.

"You have here the rather unusual situation of a corporation being a defendant. Ordinarily individuals are charged with offenses, and it is unusual that a corporation is. However, it is thoroughly legal to proceed criminally against a corporation, and although unusual, it is not infrequently done. A corporation, as you know, acts only through its officers and agents, and in order for a corporation to be found responsible, the agent against whom the charge is made must be a responsible agent. For instance, a janitor couldn't bind a corporation, or some inferior and irresponsible employee could not
511 make the corporation responsible for his actions. And the acts of the agent must be within the general scope of his authority, the general scope of his employment. So, in consideration of this charge or these charges against the corporate defendant, you should determine whether or not the acts which are charged against this corporation were done generally within the scope of the authority of responsible agents or officers of the corporation. You have seen and heard here two of the officers or agents of the defendant corporation —Mr. Lindsley and Mr. Yuhas. You should determine first, whether or not what these gentlemen did would constitute a crime as I shall define it to you later, and further whether or not these gentlemen were such responsible officers of the company as to bind the company by what they did.

"I charge you that you are the sole judges of the credibility of the witnesses and the weight to be given their evidence; and in determining this, you are entitled to take into consideration their bias, their feeling, their interest in the outcome of the case, if any such appears, their manner of testifying, their candor and frankness, and any other matters which you

would ordinarily consider in judging of the weight to be given to the statements of persons with whom you come in contact.

"Now, in the course of what I have to say to you,
512 it is entirely likely that I may make comments on the evidence, as I have a right to do, but I want you to distinctly and definitely understand that whatever I may say about the evidence, whatever comments I may make, are expressions of my opinion, made in the effort to assist and guide you. Anything I may say about the evidence is not meant in any way to infringe upon your prerogative and sole duty of determining what the facts are from the evidence which you have heard.

"Whether any one or more of the witnesses—Frank Purnell, Jr., Chester Robinson, Henry Priest, or John Sturniolo—were guilty of stealing merchandise, is not directly material at all to the issues in this case. Everyone is entitled to the protections and safeguards of the Constitution of the United States. You and I are entitled to these safeguards and protections, and so is every other person in this country. The basest criminal is entitled to his Constitutional rights. A man who has done murder may legally be tried, and may possibly be executed, but he is nevertheless entitled to his Constitutional rights to a fair trial and to be free from mistreatment and abuse. So the question on the direct issue in the case of whether or not these men were guilty of stealing is not directly
513 material. It is material and may be considered by you on the question of their credibility. If you think any one or more of these men were guilty of stealing, you may consider that, in your determination of how much weight you will give to his evidence.

"This indictment was returned in this Court sitting here in Miami on February 25, 1949. It contains four counts, which may be briefly summarized as follows:

"The four counts in the indictment are identical except as to a change in the name of the person alleged to have been abused. The indictment alleges that the acts happened on or about the 28th day of March, 1947. This exact date is not material. Evidence was offered tending to show that the witness Priest was in the so-called shack on the 27th day of March though the indictment alleges that it was on or about the 28th. This slight variation in date is immaterial.

"Since the indictments except as to names of the persons alleged to have been abused are identical, I will explain to you Count One which is the so-called Purnell count. The explanation of this one count will serve to explain to you the nature of the charge in counts two, three and four. Count alleges

the name of the person said to have been abused as Chester Robinson. Count three names Henry W. Priest, and
514 Count Four names John P. Sturniolo. As I have said, I will explain Count one and you can apply what I say to counts two, three and four.

"Count One charges that Jay G. Williams, Joseph V. Perry, John S. Bombaci, Charles R. Ford, Andrew Yuhas, and Dania Supply Company, doing business as Lindsley Lumber Company, conspired to injure, oppress, threaten and intimidate Frank J. Purnell, Jr., a citizen of the United States and of the State of Florida, in the free exercise and enjoyment of the rights and privileges secured to him and protected by the Fourteenth Amendment to the Constitution of the United States, to-wit, the right and privilege not to be deprived of liberty without due process of law, the right and privilege to be secure in his person while in the custody of the State of Florida, the right and privilege not to be subjected to punishment without due process of law, the right and privilege to be immune, while in the custody of persons acting under color of the laws of the State of Florida, from illegal assault and battery by any person exercising the authority of said State, and the right and privilege to be tried by due process of law, and if found guilty to be sentenced and punished in accordance with the laws of the State of Florida, and that it was a part of the plan and purpose of the conspiracy that the defendants which I have named would on or about the 28th day of March, 1947, arrest and detain and cause to be
515 arrested and detained the said Frank J. Purnell, Jr., and would cause the said Frank J. Purnell, Jr., to go to and into a certain building, the shack or shed of Lindsley Lumber Company on 17th Avenue in this city; and they would detain him there, and while so detaining him, they would then and there illegally strike, bruise, batter, beat, assault and torture him, in order, illegally, to coerce and force him to confess his guilt in connection with thefts from said Dania Supply Company, doing business as Lindsley Lumber Company, and to coerce him to name and accuse others of such thefts.

"There are certain matters I should make clear to you. I want you to fully understand that these defendants here on trial are not here on trial for violation of any law of the State of Florida, for assault, or for any other offense, that might be charged against them under the laws of Florida. Neither are they on trial here for assault under any laws of the United States of America. They are on trial here on the charge of conspiring to deprive Purnell, Robinson, Priest and Sturniolo of certain rights, privileges and immunities secured and protected

to them by the Constitution of the United States. The Fourteenth Amendment to the Constitution of the United
516 States provides that 'no state shall deprive any person of life, liberty or property without due process of law nor deny to any person within its jurisdiction, the equal protection of the laws.' This Constitutional provision also provides that Congress may pass appropriate legislation carrying into effect the provisions of the Fourteenth Amendment which I have just read to you. After the adoption of the Fourteenth Amendment to the Constitution, many years ago, Congress passed certain laws designed to protect and enforce certain rights and privileges protected by the Constitution. It is under one of these statutes that the present prosecution has been instituted.

"These rights and privileges protected and guaranteed to the people are not set out in detail in the statute. The statute contents itself with describing them in general terms as 'any right and privilege secured—by the Constitution and laws of the United States.' The pertinent portions of the statute is as follows: 'If two or more persons conspire to injure, oppress, threaten, or intimidate any citizen in the free exercise or enjoyment of any right or privilege secured to him by the constitution or laws of the United States,' they shall be punished as stated in the act from which the above was
517 quoted. You are not concerned with the nature of the punishment. You are merely concerned with the question as to whether or not the defendants, or some of them, are guilty of violating the statute, the pertinent portions of which have been read, that is, are guilty of conspiring to deprive the persons named in the several counts of the indictment, or some one or more of them, of the constitutional rights which have been above mentioned.

"It is not necessary for me to attempt to outline to you each and every one of the rights and privileges which are protected by the Constitution and referred to in the statute. You are concerned only with the rights and privileges stated in the indictment, the enjoyment and protection of which, it is alleged, the defendants conspired to deprive the said Purnell, Robinson, Priest and Sturniolo. These rights and privileges, as stated in the indictment, are as follows: (1) 'The right and privilege not to be deprived of liberty without due process of law.' (2) 'The right and privilege to be secure in his person while in the custody of the State of Florida.' (3) 'The right and privilege not to be subjected to punishment without due process of law.' (4) 'The right and privilege to be immune,

while in the custody of persons acting under color of the laws of the State of Florida, from illegal assault and battery
518 by any person exercising the authority of said State.'
(5) 'The right and privilege to be tried by due process of law and if found guilty to be sentenced and punished in accordance with laws of the State of Florida.' I charge you that each of these rights and privileges are protected by constitutional provision, and are within the protection of the section of the law set forth in the statute, the pertinent portions of which I have just read to you.

"The constitutional provision, implemented by the statute which I have just read to you, assures to every citizen of the United States the right and privilege not to be deprived of any of the constitutionally protected rights and privileges as a result of a conspiracy of two or more persons be they officers or not. Every person is thereby made secure in the right not to be the subject of a conspiracy to punish by beating, punishment, or penalties other than those prescribed for every person alike. This includes the right to be tried on a charge upon which one may be arrested—to be brought by due process of law into a court of the state and, if found guilty, to be sentenced and punished in accordance with the laws of the state, and also the right and privilege to be secure in his person while in the custody of the State of Florida, and the right and privilege to be immune while in the custody of persons
519 acting under color of the laws of the State of Florida from illegal assault and battery by any person exercising the authority of said state. All these rights were secured to Purnell, Robinson, Priest and Sturniolo, along with you and me, and everyone else, by the Constitution of the United States, and the federal statute upon which this indictment is based fixes the penalties in case two or more persons conspire to prevent any citizen from enjoying the same. And the guilt or innocence of crime of the above named witnesses is not material, except as in your opinion it may have bearing on his credibility, as I have explained it to you.

"This indictment, as I have told you, is based upon Section 51 of the United States Code from which I have quoted and, as I have told you, each count makes a charge of conspiracy. One person cannot commit this offense because a person cannot conspire with himself, and the statute in its very first words says that to be within the purview of the statute two or more persons must conspire. If there was no conspiracy, there was no offense under this section or under any of the counts

of this indictment. It becomes important therefore that you should understand clearly what is meant by conspiracy.

520 "Perhaps I can make this clearer to you by explaining some things which are not required. It is not necessary in order for a conspiracy to exist that the parties thereto should meet and in a formal manner, and, either verbally or in writing, agree to do the prohibited acts. Such a formal agreement would, of course, constitute a conspiracy but such formality is not necessary.

"All that is required in order for a conspiracy to exist is that the defendants should have acted in concert with an express or implied understanding to produce a desired result.

"A conspiracy has been defined to be a combination of two or more persons, by concerted action, to accomplish a criminal or unlawful purpose, or some purpose not in itself criminal, by criminal or unlawful means. It has also been defined as a partnership in criminal purposes.

"No formal agreement between the parties is essential to the formation of a conspiracy for the agreement may be deemed to have been established if there be concert of action, all the parties working together understandingly, with a single design for accomplishment of a common purpose. While the parties to a conspiracy, if there is one, should be working together understandingly, this does not mean that they would understand that what they were doing would be a violation of the law. All that is necessary is that they should under-

521 stand what they are doing. If what they thus understandingly cooperate to do is a violation of law, in this case a deprivation of constitutional rights, then the conspiracy will have been established even though the participants did not know that what they were doing would in fact be deemed to have been a deprivation or violation of any person's constitutional rights.

"A conspiracy may be proved by circumstantial as well as direct evidence.

"It is not necessary to guilt that all parties should have participated from the beginning or at the inception of a conspiracy. One who understandingly joins a conspiracy by coming into and joining in the execution of the plan after it has been conceived and is in operation, becomes a party thereto and assumes responsibility for all that has been done before he joins. And it is immaterial at what time a defendant joined a criminal conspiracy where it is shown that he joined with others in carrying out a common design.

"The conspiracy is the gist of the offense. The word gist is a legal term which means the essential ground or object

of the action in law, without which there would be no cause of action. It is the main point in issue. If you find from the evidence that a conspiracy was formed as alleged, this
522 would justify a verdict of guilty. If you further find that its purposes were accomplished, in whole or in part, this latter fact would not add in any way to the offense. However, evidence, if any, of acts done in furtherance of the objects of the conspiracy may be important in determining whether or not there was in fact a conspiracy.

"It is not necessary to the proof of the conspiracy charged here that everyone involved should have been an enthusiastic supporter of any enterprise which these men engaged in. For instance, I might ask you to endorse my note, and you might think that I was very presumptious upon short acquaintance and be very reluctant to comply with my request. But if you did, in fact, endorse it, then you entered into an agreement, even though you didn't much want to do it. So, the enthusiasm with which the enterprise was regarded by any alleged participant is not an essential ingredient in this charge. There should be no conviction, however, unless you are satisfied beyond a reasonable doubt that there was actually concerted action by understanding agreement.

"I want you to clearly understand that the statute upon which this prosecution is based was not intended to cover and does not cover personal and individual acts of a group of persons in wrongfully depriving another citizen of the Constitutional rights guaranteed to him by the Four-
523 teenth Amendment.

"Gentlemen, the law presumes that these defendants, as well as any other person charged with a crime, are innocent until, by competent evidence, they have been proven to be guilty. The indictment raises no presumption of guilt. To the benefit of this presumption of innocence, the defendants are entitled throughout their trial and it stands as their sufficient protection until it has been removed in your opinion by evidence proving guilt beyond a reasonable doubt.

"The burden of proof rests upon the United States to prove beyond a reasonable doubt the guilt of the defendants before they can be found guilty, and there must be proved all of the elements necessary to constitute the offense charged.

"It is not sufficient that the defendants, upon speculative theory or conjecture, may be guilty; or that, by the preponderance of the testimony, their guilt is more probable than their innocence; for until their guilt has been proved beyond a reasonable doubt, and as charged in the indictment, the presumption of innocence still prevails.

"Reasonable doubt, however, does not import a mere possible doubt, because everything relating to human affairs and depending on oral evidence is open to some possible or
524 imaginary doubt. A reasonable doubt exists if, after the entire comparison and consideration of all the evidence, your minds are left in such condition that you cannot say you feel an abiding conviction of the truth of the charge. A reasonable doubt is not a strained conjecture, but an actual, sincere mental hesitation caused by either insufficient or unsatisfactory evidence."

(The Defendants thereupon filed the following written requested charges:)

DEFENDANTS' REQUESTED CHARGES

"The defendants herein, and each of them, submit the following instructions and request that they be included in the charges delivered by the Court to the jury:

"1. There is no obligation upon defendants in a criminal proceeding to take the stand and give evidence. It matters not in case they decide not to take the stand what motives prompt them to come to the decision. You must not speculate as to their reasons, and I instruct you that in your deliberation of this case, you will not consider the fact that these defendants have not chosen to testify.

"2. It is charged in the indictment that the defendants conspired to deprive citizens named therein of certain rights and privileges guaranteed them by the Fourteenth
525 Amendment of the Constitution of the United States.

"The pertinent section of that Amendment reads as follows:

" 'No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.'

"As you see, Gentlemen, the Amendment does not apply to the acts of individuals but only to the acts of States. It was not intended to cover and does not cover personal and individual acts of two or more citizens, as such, in wrongfully conspiracy to deprive other citizens of the rights enumerated in the Amendment.

"Violation of the guarantees of the Fourteenth Amendment can be brought to the notice of this Court in the case of individuals only when those individuals are acting under State law or color of State law.

"Under the indictment, as it is framed in this case, it is essential, in order that a conviction can be sustained, that you find that these defendants, or at least two of them, conspired to utilize State law or color of State law in carrying
526 out the objects of the conspiracy, if you should find in fact that a conspiracy was formed. If you find merely that the defendants, or two of them, conspired only to deprive the complaining witnesses of the rights enumerated in the indictment but did not intend, in doing so, to act under the laws of the State of Florida or color of the laws of the State of Florida, then it is your duty to acquit them.

"3. The section of the United States Code, under which this indictment is drawn, does not mention the word 'intent', nor does it mention the word 'wilful'; nevertheless, I must instruct you that an offense, which is made a felony by law, cannot be committed without criminal or felonious intent. An act, which is committed without criminal intent, is not a crime and so, in this case, it is necessary that criminal intent be proved in order that a conviction may be found. In other words, it is not sufficient that the Government merely prove that a conspiracy was formed by these defendants to do a certain thing, but it must also be proved that the defendants, or at least two of them, criminally intended to enter into the conspiracy, and intended, as the object of that conspiracy, to do a criminal act. In this case, you must find a further fact that they
527 intended wilfully to do the act which was the object of the conspiracy.

"Now, the word 'wilfully' has a meaning, and a very definite meaning, that must be carefully considered by you. In law, the use of the words, 'wilful' and 'wilfully', imply a conscious purpose to do wrong. Doing a thing knowingly and wilfully implies not only a knowledge of the thing done, but a determination to do it with bad intent or with an evil purpose or motive. It is not sufficient that the defendants here had generally a bad purpose in doing the things they are alleged to have done, or that they went too far because of an excess of zeal in their desire to obtain confessions from the complaining witnesses. In order to convict under this indictment, it is necessary for the jury to find that the defendants had in mind the specific purpose of depriving the complaining witnesses of those rights guaranteed them under the Fourteenth Amendment to the Constitution of the United States, which are enumerated in the indictment while acting under color of the laws of the State of Florida.

"The proof, if any, of a general intent to do the complaining

witnesses a wrong is not sufficient, but a specific intent to deprive them of a Constitutional right, as the object of the conspiracy, if any, is a burden the law casts upon the
528 Government. In considering whether the defendants had such specific intent, you may take into consideration all the circumstances of the case in the light of the evidence as it has been developed.

"Now, 'intent' is something that exists in a man's mind. It is impossible for you to enter into a man's mind or into the mind of defendants to determine the intent with which they acted. Therefore, their intent has to be judged by their intelligence, as shown by the evidence; by their experience in life, as shown by the evidence, and generally by judging them as reasonably prudent persons, experienced in the affairs of everyday life, judge each other, and it is the law that a person intends the usual consequences of his acts.

"Neither color of law nor specific intent may be presumed by you gentlemen of the jury, but both color of law and specific intent must be proven by the Government beyond a reasonable doubt.

"To return a verdict of guilty, under this indictment, you must therefore answer the following question in the affirmative:

"Did the defendants, or any two or more of them, knowingly and intentionally enter into a conspiracy with the specific intent, wilfully and knowingly, and while acting
529 under color of the laws of the State of Florida, to deprive the prosecuting witnesses, or any of them, of those rights and privileges guaranteed them under the Fourteenth Amendment which are enumerated in the indictment." (Signed) "John D. Marsh, Attorney for Charles R. Ford. John S. Bombaci, In Proper Person. Robert L. Floyd, Attorney for Joseph V. Perry. A. C. Dressler, Attorney for Jay G. Williams. Ed. Strickland and Ernest E. Roberts, Attorneys for Andrew J. Yuhas and Dania Supply Co."

"Comes now the defendant, Andrew J. Yuhas, and respectfully requests the Court to instruct the Jury as follows:

"I. The Court instructs the Jury that the defendants at the outset of the trial are presumed to be innocent. They are not required to prove themselves innocent or to put in any evidence at all upon that subject. In considering the testimony in the case, you must look at that testimony and view it in the light of that presumption which the law clothes the defendants with, that they are innocent, and it is a presumption that abides

with them throughout the trial of the case until the evidence convinces you to the contrary beyond all reasonable doubt.

530 II. I charge you, Gentlemen of the Jury, that the indictment in this case is not to be considered as evidence. It is the first pleading on the part of the government. It is a formal accusation in writing charging the defendants of a crime, and stating its nature. The guilt or innocence of the defendants must be determined by you from the evidence as produced during the trial. Again I repeat the indictment is not to be considered as evidence.

"III. You are not, in your deliberations of this case, to consider anything that you may have heard said outside of this court; neither are you to consider anything that you have read in the newspapers. Your sole determination of the case is to be governed by the evidence that you have heard, with the exception that you are reminded that the defendants are considered innocent until proven guilty by the government to your satisfaction beyond a reasonable doubt.

"IV. You are reminded that this case before you is a conspiracy indictment and not an indictment for a substantive offense. The gist of the charge of conspiracy is the intent. It is not sufficient for the government to show that the defendants or any of them had a bad motive or intent. The government must show that the defendants, or at least two of them, entered into a plan and scheme to specifically deprive

531 either Robinson, Sturniolo, Priest or Purnell of their constitutional rights as charged in the indictment. If you find from the evidence that it was not the defendants specific intent to deprive the complaining witnesses of their constitutional rights, even though they did not act as ordinary prudent persons would have acted, then you must find the defendants not guilty.

"V. There is a marked distinction between an act of an agent in protecting the property of his master and the act of an agent in the recovery of stolen property. It is a general rule that the acts of an agent, servant or employee in the protection of his master's property may be implied and the master is liable for the acts of his agent, servant or employee in such a capacity; however, where the act of the agent, servant, or employee is done in an effort to recover property already stolen and removed from the master's premises for the purpose of vindicating public justice, then the master is not liable for such acts as implied authority cannot be said to cover such acts.

"VI. I again charge you, Gentlemen of the Jury, that the defendants are not on trial for a substanti e offense. By that

I mean the defendants are not being tried for any beatings that may have been given the complaining witnesses,
532 Priest, Sturniolo, Robinson and Purnell. The defendants are being tried for conspiracy. The gist of any conspiracy is the intent. Any evidence as to any beatings may only be considered by you for whatever value you may give it in deciding whether or not there was a conspiracy. Now I remind you that there may have been beatings and still that and that alone would not necessarily infer that there was a conspiracy. The mere fact that you, from your deliberations of the evidence, find that there was a conspiracy would not in itself be sufficient to render a verdict of guilty as to any of the defendants. You must, in order to convict these defendants, find to the exclusion and beyond a reasonable doubt that there was a wilful intent to deprive the complaining witnesses of a specific constitutional right; and that right must be one of the five enumerated and set out in the indictment. If you find there was no such intent then your verdict should be Not Guilty.

"VII. The Court charges you that mere presence at the time a crime is committed, without interferring, does not make one a party to a crime unless his interference was a duty by reason of some position held by him. If you find from the testimony that the defendant, Yuhas, did not strike any of the complaining witnesses, Purnell, Robinson, Priest or Sturni-
533 olo, nor did he incite or encourage anyone so to do, but was merely present, if such assault occurred, then it is your duty to find the defendant, Yuhas, not guilty. Respectfully Submitted." (Signed) "Ed. Strickland, Attorney for Defendant Andrew J. Yuhas."

"Comes now the defendant, Dania Supply Co., and respectfully requests the Court to instruct the Jury as follows:

"I. The Court instructs the Jury that the defendants at the outset of the trial are presumed to be innocent. They are not required to prove themselves innocent or to put in any evidence at all upon that subject. In considering the testimony in the case, you must look at that testimony and view it in the light of that presumption which the law clothes the defendants with, that they are innocent, and it is a presumption that abides with them throughout the trial of the case until the evidence convinces you to the contrary beyond all reasonable doubt.

"II. I charge you gentlemen of the jury that the indictment in this case is not to be considered as evidence. It is the first

pleading on the part of the government. It is a formal accusation in writing charging the defendants of a crime, and
534 stating its nature. The guilt or innocence of the defendants must be determined by you from the evidence as produced during the trial. Again I repeat the indictment is not to be considered as evidence.

"III. Gentlemen, in order to convict the defendant, Dania Lumber Co. as charged in the indictment, the evidence must establish to your satisfaction beyond a reasonable doubt, that the conspiracy was entered into by an agent or agents of the corporation, having authority to bind the corporation, or that the conspiracy was ratified and approved by the corporation. If, however, you find from the evidence that the Continental Detective Agency was an independent contractor, hired by the defendant, Dania Supply Co. to do a specific job, and that the Continental Detective Agency had complete control over the hiring and firing of its employees, and conducted the investigation according to its own methods without any supervision or interference on the part of the Dania Supply Co., then you must find that the Continental Detective Agency was an independent contractor and your verdict as to the Dania Supply Co. should be not guilty.

"IV. I further charge you that an independent contractor is one who, exercising an independent employment, con-
535 tracts to do a piece of work according to his own methods, and without being subject to the control of his employer except as to the results of the work.

"V. You are not, in your deliberations of this case, to consider anything that you may have heard said outside of this court; neither are you to consider anything that you have read in the newspapers. Your sole determination of the case is to governed by the evidence that you have heard, with the exception that you are reminded that the defendants are considered innocent until proven guilty by the government to your satisfaction beyond a reasonable doubt.

"VI. You are reminded that this case before you is a conspiracy indictment and not an indictment for a substantive offense. The gist of the charge of conspiracy is the intent. It is not sufficient for the government to show that the defendants or any of them had a bad motive or intent. The government must show that the defendants or at least two of them entered into a plan and scheme to specifically deprive either Robinson, Sturniolo, Priest or Purnell of their constitutional rights as charged in the indictment. If you find from the evidence that it was not the defendants specific intent to deprive

the complaining witnesses of their constitutional rights,
536 even though they did not act as ordinary prudent persons would have acted, then you must find the defendants not guilty.

"VII. I instruct you gentlemen of the jury that the Dania Supply Co., being a corporation, can only act through its officers and duly authorized agents, servants and employees. That as a corporation it is not bound by any acts of its officers, agents, servants or employees unless they are given express authority or clothed with apparent authority. If you find from the evidence that the agents, servants or employees were not given actual authority to commit the alleged act or alleged acts as charged, you must then determine whether or not they were clothed with and had apparent or implied authority. If you find they did not have either actual or implied authority to act as they are alleged to have acted then you must find the defendant, Dania Supply Co. not guilty. The Court further instructs you that in determining whether or not the agents, servants or employees had implied authority, you must take into consideration that if they had reason to believe that property had actually been stolen from Lindsley Lumber Co. and that they could recover it and vindicate public justice by taking the thief into custody for arrest, then the agents,
servants or employee is not acting within the scope of
537 his employment and the limits of his implied authority, and Dania Supply Co. is not liable, regardless of how erroneous, mistaken or malicious the acts may have been.

"VIII. There is a marked distinction between an act of an agent in protecting the property of his master and the act of an agent in the recovery of stolen property. It is a general rule that the acts of an agent, servant or employee in the protection of his master's property may be implied and the master is liable for the acts of his agent, servant or employee in such a capacity; however, where the act of the agent, servant, or employee is done in an effort to recover property already stolen and removed from the master's premises for the purpose of vindicating public justice, then the master is not liable for such acts as implied authority cannot be said to cover such acts.

"IX. The courts generally recognize that the private employer would be relieved from liability for the acts of commissioned police officers in their official capacity, although he has paid such officers for services in and about the employer's property, and the fact that the special police officers were commissioned as such protects the private employer from their

acts so far as in any particular case such acts may thoroughly be regarded as having been performed in their official
538 capacity rather than simply in behalf of the private employer.

"X. As a general rule a corporation cannot be held responsible for the acts of special police paid by the corporation when the acts complained of are performed in carrying out the duty of a public officer.

"XI. The test as to whether or not an employer is responsible for the acts done by his servant is this: Not if the act is done during employment but if done by authority of the employer, expressly conferred or thoroughly implied in the nature of the employment and duties incident thereto.

"XII. A simple test as to the responsibility of the employer is whether the acts were within the scope of the servant's employment, not whether they were done by prosecuting the master's business but whether they were done in furtherance thereof or such as may thoroughly be said to have been authorized.

"XIII. The general rule is that if the servant, instead of doing that which he is employed to do, does something else which he is not employed to do at all, the master or employer cannot be said to do it by his servant and therefore is not responsible for what he does. It is not sufficient that the acts showed that the servant did it with the intent to benefit
539 or serve the master or employer. It must be something done in attempting to do what the employer has employed this servant to do.

"XIV. The general rule is that a master or principal, in this case the Dania Supply Co., is not liable for the tortuous act of his agent or servant unless that act is done by an authority, either expressed or implied, given the servant for that purpose by the master.

"XV. The mere fact of a servant having been employed in the capacity of a detective will not warrant the inference that such detective was authorized to take a person into custody or to assault such person. In the absence of specific testimony the Jury should not infer that it is the intention of a master to invest a servant whom he merely deputes to gather evidence regarding a crime with a discretionary power to determine whether the evidence collected is sufficient to warrant the laying of a charge against the party to whom it relates; nor may the Jury infer that under such circumstances the master authorized the servant to assault the accused party. It is more natural to assume that under such circumstances the master intended to reserve an opportunity of considering what steps

should be taken after the evidence has been placed before him.

540 "XVI. If you find from the evidence that the witnesses, Purnell, Robinson, Priest and Sturniolo, were assaulted by employees of the Dania Lumber Co., but that such assault was not done with the consent or direction, either expressed or implied, of the Dania Supply Co., then it is your duty to return a verdict of Not Guilty as to the Dania Supply Co.

"XVII. I again charge you gentlemen of the Jury that the defendants are not on trial for a substantive offense. By that I mean the defendants are not being tried for any beatings that may have been given the complaining witnesses, Priest, Sturniolo, Robinson and Purnell. The defendants are being tried for conspiracy. The gist of any conspiracy is the intent. Any evidence as to any beatings may only be considered by you for whatever value you may give it in deciding whether or not there was a conspiracy. Now I remind you that there may have been beatings and still that and that alone would not necessarily infer that there was a conspiracy. The mere fact that you from your deliberations of the evidence find that there was a conspiracy would not in itself be sufficient to render a verdict of guilty as to any of the defendants. You must in order to convict these defendants find to the exclusion and beyond a reasonable doubt that there was a wilful intent to deprive the complaining witnesses of a specific con-

541 stitutional right; and that right must be one of the five enumerated and set out in the indictment. If you find there was no such intent then your verdict should be Not Guilty. Respectfully Submitted." (Signed) "Ed. Strickland, Attorney for defendant Dania Supply Co."

"Charles R. Ford, one of the defendants herein, submits the following instructions and requests that they be included in the charges delivered by the Court to the Jury.

"1. In this case, the government has relied in part, in attempting to prove its case against these defendants, upon the testimony of Henry Giroux, an alleged co-conspirator or accomplice, who has become a government witness against these defendants.

"I charge you that the testimony of such a witness is competent but I also charge you that such testimony is liable to grave suspicion, and you should always act upon it with great care and caution, and subject it to careful examination in the light of all the evidence in the case. You should consider the

influence under which such testimony is given, if any, and whether the purpose of the witness is to shield himself from punishment, to obtain some benefit for himself, or to
542 gratify his malice, and the jury ought not to convict upon such testimony alone, unless after a careful examination of such testimony in the light of other evidence in the case, you are satisfied beyond a reasonable doubt of its truth, and that you can safely rely upon it.

"2. The witness, Henry Giroux, has admitted, while testifying for the Government, that in a previous inquiry into the events that took place on March 26, 27, and 28, 1947, he gave evidence under oath in direct conflict to that which he has given here. You must conclude from such an admission that this witness is guilty of perjury, either in these proceedings or in the previous ones in which he testified under oath, and I charge you that the testimony of one known to be a perjurer, while it may be received, should be received with extreme caution and, in considering such testimony, you should bear in mind that the oath to tell the whole truth, which the witness has taken, has meant little or nothing to him on at least one occasion.

"3. In a previous trial held in this Court, the defendants, Joseph V. Perry, John S. Bombaci, Charles R. Ford, Andrew J. Yuhas and Dania Supply Co. were found not guilty by a jury and acquitted of the offense which is made the substantive act in each of the counts of this indictment, that is the act which the defendants here are charged with having conspired
543 to commit.

"To put it another way, a competent jury of this Court has determined that the defendants, who I just named, did not wilfully, under color of the laws, statutes, ordinances, regulations, and customs of the State of Florida and of the municipality of Miami, subject and cause to be subjected Frank J. Purnell, Jr., Chester M. Robinson, Henry W. Priest and John P. Sturniolo, the complaining witnesses in the present trial, to deprivation of the rights, privileges and immunities secured to each of them and protected by the Fourteenth Amendment to the Constitution of the United States, to-wit, the right and privilege not to be deprived of liberty without due process of law, the right and privilege to be secure in their persons while in the custody of the State of Florida, the right and privilege not to be subjected to punishment without due process of law, the right and privilege to be immune, while in custody of persons acting under color of the laws of the State of Florida, from illegal assault and battery by any persons exercising the authority of said State, and the right and privi-

lege to be tried by due process of law and, if found guilty, to be sentenced and punished in accordance with the laws of the State of Florida, in that on or about March 28, 1947,
544 the defendants arrested and detained and caused to be arrested and detained the complaining witnesses whom I have named, and brought and caused them to be brought to and into a certain building, sometimes called a shack on the premises of the Lindsley Lumber Co., at or near 3180 N.W. 17th Avenue, in Miami, Florida, and did there detain the complaining witnesses, and, while they were so detained, the defendants did then and there illegally strike, bruise, batter, beat, assault and torture the mentioned complaining witnesses, in order illegally to coerce and force them to make an admission and confession of their guilt in connection with the alleged theft of personal property, all ged to be the property of Dania Supply Co., doing business as Lindsley Lumber Co., and in order illegally to coerce and force such complaining witnesses, and each of them, to name and accuse other persons of participating in alleged thefts of such personal property, and for the purpose of imposing illegal summary punishment upon such complaining witnesses.

"The verdict of the jury which I have mentioned forecloses the question of whether or not Perry, Bombaci, Ford, Yuhas and Dania Supply Co. did do the things which I mentioned above in their favor and against the Government, and you must consider that they did not commit these acts, and
545 you must also consider that these defendants, who I have named, did not aid, abet, encourage, counsel, command, induce, procure or in any way assist any other person to commit such an act, so, in reaching a verdict in this case, you must take into consideration the fact that neither Perry, Bombaci, Ford, Yuhas and Dania Supply Co. did commit the substantive act charged as being the object of the conspiracy charged here, and that none of them aided, abetted, encouraged, counseled, commanded, induced, procured, or in any way assisted in the commission of that act.

"4. As I have already instructed you, a conspiracy is defined to be a combination of two or more persons, by concerted action to accomplish a criminal or unlawful purpose or some purpose not in itself criminal by criminal or unlawful means; or, as it has sometimes been defined, a partnership in criminal purposes. While no formal agreement between the parties is essential to the formation of a conspiracy, if there be concert of action, with all parties working together, understandingly, with a single design for the accomplishment for a common

purpose, it is necessary, in order to form a conspiracy that the minds of the parties meet in agreement upon the object to be accomplished and all parties must work together understandingly to accomplish a certain definite object known
546 to and understood by all, to be the purpose or object of concerted action of the parties. Thus, in order to be a member of a conspiracy a person must know and understand that there is a certain object to be accomplished and he must work together with other members of the conspiracy for the purpose of accomplishing a common object shared by all other members of the conspiracy. I wish to make it plain to you that one cannot become a member of a conspiracy, or be a party to a conspiracy without knowing that there is a plan to accomplish a certain purpose which each member of the conspiracy must share, so in this case, in order to prove that a conspiracy existed between the defendants, the Government must prove beyond and to the exclusion of a reasonable doubt that the minds of two or more of the defendants met in agreement upon a certain definite object to be accomplished by the concerted action of all, and that two or more of the defendants, knowing, and understanding the object to be accomplished, worked together for the express purpose of accomplishing the same common object upon which their minds had met, which was known to, understood by and shared by all. Of course, you must always bear in mind, that in order for the Government to prove the charge of conspiracy against all defendants, all must have known of the object to be accomplished, all must have understood the object, and all must have worked together in
547 concert to accomplish the same object and no one can be held to have been a party to any conspiracy unless he did know, and understand and work in concert with others to accomplish the same object. The existence of a conspiracy cannot be established merely by proof that two or more or all of defendants were together at any certain time or at different times or that they participated in the same transaction unless the Government goes further and proves that they were all acting together in concert for a common purpose which must have been shared by all to accomplish a certain object which all must have understood and known to all to be the object to be accomplished. If you find that there was no such concert of acts, or no common understanding of an object to be accomplished, then there can be no conspiracy. If after a fair consideration of all of the evidence there remains in your minds a reasonable doubt, arising either from the evidence or the lack of evidence, that any such common understanding

existed between the defendants in this case, then no conspiracy has been proved, and you must find the defendants not guilty and acquit them.

"5. Before you can find the defendant, Charles R. Ford, guilty, the Government must prove to you beyond and to the exclusion of a reasonable doubt *FIRST:* that
548 a conspiracy existed, and *SECOND:* that Ford was a party to the conspiracy. Of course, if you find that no conspiracy existed, then that ends the matter, but, even if you find that a conspiracy did exist, the Government would still have to prove beyond and to the exclusion of a reasonable doubt that Charles R. Ford was a party to the conspiracy and in order to do so, the Government must prove beyond and to the exclusion of a reasonable doubt that Charles R. Ford knew of the existence of a common purpose on the part of some of the other defendants to accomplish a certain specified object and that he joined in their efforts to accomplish that object and worked knowingly and understandingly in concert with them understandingly to accomplish that object, and, if the Government fails to prove that beyond and to the exclusion of a reasonable doubt, then Charles R. Ford's connection with any conspiracy will not have been proved, and you should acquit him.

"6. I have discussed with you what must be shown to establish the existence of a conspiracy, and now I wish to call your attention to the fact that the Government must prove *FIRST:* That a conspiracy did exist and must prove *NEXT:* that the object of the conspiracy was to injure, oppress, threaten or intimidate Frank J. Purnell, Jr., Chester M. Robinson,
549 Henry W. Priest and John P. Sturniolo, or at least one of them in their enjoyment and exercise of rights and privileges secured to them by the Fourteenth Amendment to the Constitution of the United States, which are expressly enumerated in the indictment. I wish to make it clear to you that, in order to be entitled to a conviction, the Government must prove beyond and to the exclusion of a reasonable doubt, not merely that a conspiracy existed, but that a conspiracy existed having for its sole object, the object charged in the indictment, that is to injure, oppress, threaten or intimidate Purnell, Robinson, Priest and Sturniolo, or some one of them in the exercise and enjoyment of rights and privileges secured to them by the Fourteenth Amendment to the Constitution of the United States, which are expressly enumerated in the indictment. Mere proof of a conspiracy to commit assault and battery upon some one or all of these men is not sufficient be-

cause that is not the charge made in the indictment; mere proof of a conspiracy to falsely imprison some one or all of these men is not sufficient because that is not the charge made in the indictment. The charge in the indictment is that the object of the conspiracy was to deprive these four men or some one of them of the rights secured to them under the Fourteenth Amendment to the Constitution of the United States
550 and, if the Government fails to prove beyond and to the exclusion of a reasonable doubt that a conspiracy did exist and that that was the object of the conspiracy, then you must find the defendants not guilty. Respectfully submitted," (Signed) "John D. Marsh, Attorney for Charles R. Ford."

(Defendant Ford also requested the following charge be given, as taken from Judge Barksdale's Charge to the Jury in Case No. 7279-M-Criminal:)

"You have heard testimony as to the general reputation of the defendants, Ford and Perry, as to their being peaceable, honest, law-abiding and truthful citizens. You are to take such testimony into consideration and weigh it with all the other testimony introduced in this case. If, after so doing, there is a doubt in your mind as to the guilt of these defendants, and you believe the evidence as to their general reputation, and such evidence engenders in your mind a reasonable doubt as to their guilt, it would be your duty to return a verdict of not guilty, as to them."

(A recess was then taken until 2:00 o'clock p.m. of this date.)

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551 AFTERNOON SESSION

Miami, Florida,
Thursday, April 22, 1949,
2:00 o'clock p.m.

(Trial resumed pursuant to noon recess. Appearances same as heretofore noted.)

RULINGS ON REQUESTS

(The following proceedings took place without the presence of the jury.)

The Court: Mr. Botts, have you a copy of your charge? I have made my memoranda on the original here. If I file it with the Clerk it will be changed.

Mr. Botts: I have a copy here, but I have made some memoranda on that, but I will get one from the office.

The Court: So you will lodge that with the Clerk later on as your requests?

Mr. Botts: All right.

The Court: Have copies been exchanged now? Was that attended to?

Mr. Botts: Yes, sir, I think so. I have several.

The Court: Mr. Bombaci, did you have copies of the requests?

Mr. Bombaci: Yes, sir.

The Court: You stated you did?

Mr. Bombaci: Yes, sir.

The Court: I will take up the Government's requests.

552 It hasn't any numbers; it is a long one. I will have to refer to it by paragraphs. On the first page, in the first paragraph, I am leaving out down through "The point only was this." Commencing "You have heard the matter of punishment mentioned," and then down in the fourth line "The point only was this." I am leaving that out.

Mr. Botts: Yes. There will be some of that that is not appropriate now.

The Court: Then on the second page in the first paragraph, go down to the sixth line from the bottom. I am leaving out that sentence, "You have seen and heard here two of the officers or agents of the defendant corporation—Mr. Lindsley and Mr. Yuhas."

Mr. Botts: That is right.

The Court: Then I am changing the next sentence so that it will read this way: "You should determine first whether or not what the officers or agents did would constitute a crime as I shall define it to you later, and further whether or not these officers or agents were such responsible officers or agents of the company as to bind the company by what they did."

Then, down at the bottom of Page 2 I am leaving out that paragraph commencing, "Now, in the course of what I have to say to you, it is entirely likely that I may make some comments on the evidence." I am leaving that paragraph out.

553 Then I am leaving out the next paragraph, commencing "Whether any one or more of the witnesses, Frank Purnell—" and so forth. All of that paragraph I am leaving out.

Then, on Page 4, in the first line, I am omitting this sentence "Evidence was offered tending to show that the witness

Priest was in the so-called shack on the 27th day of March though—" There is a "t" there, but I will read it "—though the indictment alleges that it was on or about the 28th." This next sentence I am changing "this" to "any", so it will read "Any slight variation in date is immaterial."

Then, in the next paragraph, I think it was just left out, where you speak of the indictments; I think it is proper to say, "Since the counts in the indictment, except as to names of the persons alleged" and so forth.

Mr. Botts: Yes, certainly; there was a word left out there.

The Court: "Since the counts in the indictment".

Mr. Botts: I never had a chance to proof read that.

The Court: Go down on Page 5, in the third from the last line. Instead of "carrying into effect" I am going to use the phrase "to enforce".

Then, on Page 6, in the paragraph starting on that
554 page, in the third line I have made some changes in the sentence commencing on the second line, "The statute contents itself with describing them in general terms as—" then I have eliminated the quotes, "—any right—" and instead of "and", make it "or". "—any right or privilege secured by the Constitution—", then I have changed the word "and" again to "or"; "—or laws of the United States. Then there is a typographical error down in the sixth line from the bottom; it is "stated"; "privileges stated".

Then, on Page 7, in the paragraph starting on that page, in the fifth line I am omitting "be they officers or not."

Then, on Page 8, in the third line there was a typographical error in "federal statute", in the word "federal". Then, I am leaving out the last sentence in that paragraph.

Mr. Botts: You mean the first paragraph at the top of the page?

The Court: Yes, sir. "And the guilt or innocence of crime of the above named witnesses—".

Mr. Botts: Yes, sir. That is all right

The Court: I intend to make some reference to Mr. Giroux' plea of guilt to certain offenses being admitted in evidence, and that the jury may consider that in connection with their weighing his testimony.

555 Mr. Botts: Yes, sir.

The Court: Now, I believe I told you I am leaving out the last sentence in the first paragraph, the paragraph at the top of Page 8 not the complete paragraph.

Mr. Botts: Yes, sir.

The Court: In other words, the paragraph commencing over on Page 7.

Mr. Botts: I see what you mean. That is in line with what you admitted before.

The Court: I think I have commented on that.

Mr. Botts: I have no objection.

The Court: On Page 10 there is a typographical error down in the last paragraph in the second line; the letter "e" is left off of "crime".

Now I will take up what I call joint requests. These are the requests signed by various counsel.

The first one I shall give.

The second one I shall give with the addendum that a municipal police officer is, in the performance of his duties, as applicable to this case, acting under state law or color of state law. That addendum is that "A municipal police officer is, in the performance of his duties, as applicable to this case, acting under state law or color of state law."

Now, the third one I shall give with certain
556 deletions or omissions. In the second line, after the word "intent", I am omitting "nor does it mention the word 'wilful' ". Then, over on Page 3 I am omitting the last sentence in that paragraph, which started over on Page 2 and wound up on Page 3; in other words, I am eliminating "In this case, you must find a further fact that they intended wilfully to do the act which was the object of the conspiracy." I am omitting that.

In the next paragraph I am omitting commencing with the word "Now" and running through the word "witnesses". I am omitting all of that; that is, "witnesses" in the tenth line of that paragraph.

Then, over on the last page I am omitting the words in the fourth line from the bottom "wilfully and".

Mr. Botts: I don't see just where that is.

The Court: It is on the last page.

Mr. Botts: Yes, sir.

The Court: The fourth line from the bottom.

Mr. Botts: Oh, yes.

The Court: "Wilfully and".

Mr. Botts: Yes, sir. I see that now.

The Court: I am omitting those words.

Mr. Botts: If the Court please, in connection with the—

The Court: Wait, Mr. Botts; let me get through.

Mr. Botts: Yes, sir.

557 The Court: I will take up the requests of Mr. Ford. The first one I shall give. The second one I shall refuse. The third one I shall give, with the exception of the first paragraph on Page 4, which I am omitting. Now, No. 4: The words

at the beginning of it, "As I have already instructed you", I am omitting those. No. 5 I am giving. No. 6—

Mr. Floyd: Did you say you are omitting No. 5?

The Court: No, sir. I am giving No. 5. You got what I said in regard to No. 4, didn't you?

Mr. Floyd: Yes, sir.

The Court: I am giving No. 5. No. 6 I am giving with the omission of the word "sole" down in the ninth line from the bottom of Page 7.

Now, it has been a little difficult to deal with these requests, since they are adopted as they have been. Taking No. 5 of these requests of Mr. Ford, it starts "Before you can find the defendant, Charles R. Ford, guilty—". I will have to tell the jury that all the charges, even though one defendant is named, will apply to all defendants, unless you prefer, Mr. Marsh, that I just leave out "Ford" and say "defendants".

Mr. Marsh: I would prefer that, if your Honor please.

The Court: I won't stop to make those changes now,
558 but I will come back to them, because I might have that to deal with in connection with Mr. Yuhas and the Dania Supply Company.

Now, as to Mr. Yuhas. No. 1 I shall give.

Mr. Botts: If the Court please, I haven't had any requests on behalf of Mr. Yuhas.

Mr. Roberts: Here you are (handing same to Mr. Botts).

The Court: Did you give him a copy of the Dania Supply Company's requests?

Mr. Botts: Yes. I have those.

The Court: No. 1 I shall give. No. 2 I shall give. No. 3 I shall give. No. 4 I shall give. No. 5 I shall refuse. No. 6 I shall give with a change, leaving out the word "wilful" in the fourth line from the bottom of this No. 6. Then it would be proper to change the word "a" to "an", leaving it "there was an intent". No. 7 I shall refuse.

Now, as to the Dania Supply Company. No. 1 I shall give. No. 2 I shall give. No. 3 I shall refuse and do refuse. No. 4 I refuse. No. 5 I shall give. No. 6 I shall give. No. 7 I shall give, with the deletion of the last sentence, the long sentence commencing with the words "The Court further instructs you that in determining".

Mr. Botts: What page is that?

559 The Court: That is on Page 3, in the seventh request.

Mr. Botts: I thought you said No. 6.

The Court: No. I am giving No. 6. This is the last sentence in No. 7

Mr. Botts: Yes, sir.

The Court: I am deleting that, "The Court further instructs you that in determining", and so forth, and running down through the end of that requested charge. No. 8 I refuse. No. 9 I refuse. No. 10 I refuse. No. 11 I refuse. No. 12 I shall give. No. 13 I refuse. I refuse No. 14. I refuse No. 15. I shall give No. 16. The next one, the last one, you ought to change your numbers from "XV" to "XVII". That one I am giving, which I now number "XVII", with the deletion of the word "wilful" in the fourth line from the bottom. Of course, that article "a" should be changed to "an".

Now, going back to that adoption of the several requests, in the Dania Supply Company, since I am giving the first portion of No. 7, I should state specifically the Dania Supply Company.

Mr. Botts: I was just about to suggest that the adoption dealt with where applicable, and I think it is manifest that a charge with reference to the Dania Supply Company is in many respects not applicable to the others: I mean,
560 whether they intend to adopt those referring to the Dania Supply Company, or would rather refer to the individual defendants, because, manifestly, a charge referring to the Dania Supply Company might be proper in some respects and be wholly inapplicable to the individual defendants.

Mr. Marsh: We would adopt the ones that were applicable.

Mr. Botts: That is my understanding, you reserved it to those that were applicable. That would exclude the portions referring particularly to the Dania Supply Company, which would be inapplicable to the individuals.

The Court: So, Mr. Marsh, would it be agreeable to you, then, if I change it where you state "Mr. Ford" and just say "defendants"?

Mr. Marsh: Yes, sir, that would.

The Court: I will note now an exception in favor of each and very party making request to the nongiving of the request as submitted or the giving of the same in an altered form, and I likewise note an exception to the giving of any request by the opposite party; that is, in favor of the opposite party, the giving of the request, or giving it in an altered form. The usual exceptions are in favor of the Government and each and every of the defendant. You started to say something
561 a while ago. I am ready to go ahead. Are you ready to go ahead?

Mr. Botts: Yes. If the Court please, I have, I might say, nothing in the way of objections to the charge as now framed, because very largely your Honor has stricken the very points in this to which I had in mind to raise objection. I have no objection whatever to the changes made in the requests by the Government, because those were largely by way of clarifi-

cation or correction of typographical errors. There are one or two—not objections, I should say, because it isn't that, but suggestions by way of clarification that I wish to submit to the Court; that is under those submitted by all. If you would turn to Page 3, you struck out a part of the charge there beginning at the top of Page 3, beginning "In order to convict under this indictment, it is necessary for the jury to find—" Do you have that place, down about the middle of Page 3? It is in the charge signed by all of them.

The Court: On Page 3?

Mr. Botts: Yes, sir.

The Court: I don't see it.

Mr. Botts: After the words "complaining witnesses". You struck out down to the words "complaining witnesses" in the paragraph beginning "Now; the word 'wilfully' ". I
562 think you must have the wrong lot.

The Court: Oh, I see.

Mr. Botts: That is the one that is signed by—

The Court: All counsel.

Mr. Botts: That is the one you have now. On Page 3 you struck out down to and including the words "complaining witnessess".

The Court: Yes.

Mr. Botts: Now, then, I want to read that next sentence and make a suggestion. "In order to convict under this indictment, it is necessary for the jury to find that the defendants had in mind the specific purpose of depriving the complaining witnesses of those rights guaranteed them under the Fourteenth Amendment to the Constitution of the United States—". Now, it occurs to me that that might inject a confusing thought into the minds of the jury, because, as a matter of fact, it is quite possible that these defendants, assuming that they did the things that were charged, did not have in mind that it was a violation of their constitutionally guaranteed rights. I would suggest that that be amended in this wise: "In order to convict under this indictment it is necessary for the jury to find that the defendants had in mind the specific purpose to do the acts which they did, without imputing to them the knowledge that those acts would be a violation of civil
563 rights. In other words, my thought is this, that if they had in mind the doing of certain acts and those acts were in fact such acts as would or might deprive the complaining witnesses of their civil rights it would be immaterial whether or not the defendants knew that the doing of those—that is, were conscious of the legal concepts, that the doing of those acts would deprive them of their legal rights. I just simply would like for the clarification to be made so that

the jury could not get the impression that the defendants must have known the law and that under the law they were depriving these persons of their civil rights. Then I have the same suggestion—

The Court: Wait. Let me get through with one. Instead of saying "depriving them of those rights", put what, now?

Mr. Botts: I will give you the exact language I want to suggest in just a moment. Now, before the words "had in mind"—

The Court: Have you written it out? Can you hand it up to me, please?

Mr. Botts: Well, I haven't written it in here, but I will do that, if I might have just a moment, because I have made a notation here. For the benefit of counsel the other way I will read this and then hand it to your Honor. In that line containing the words "defendants had in mind"; then the following words "the specific purpose of depriving", I

564 suggest that those words be deleted and in lieu thereof the following words be substituted "doing certain acts, the reasonable and probable results of which would be to deprive". That will eliminate a possibility of confusion, that they must have known the legal effect of what they were doing.

Mr. Dressler: May I give you Judge Strum's charge from the last Crews case. It will be helpful to the Court in deciding just what you are doing here. Judge Strum used a portion of the same instructions.

The Court: I don't want to go into reading a lot of instructions. I want to get on with the case. You think that supports your request as submitted, do you, Mr. Dressler?

Mr. Dressler: Yes, sir, I do, on the bottom of Page 13 of Judge Strum's charges. That was the case tried in Albany, Georgia, the last Crews case after it was returned from the Supreme Court of the United States.

The Court: That was under 52, wasn't it?

Mr. Dressler: Yes, sir.

The Court: I will leave it just as it is. Note an exception, if you wish.

Mr. Roberts: I don't want to be contentious or argumentative, but Charge No. 7 of Mr. Yuhas, which has been refused, about presence at a crime not making one a party thereto, I would like to call your Honor's attention—of course, it

565 is not binding on this Court—to a statement made by Judge Barksdale at the last trial in his charge to the jury, in which he said, I can't make it to emphatic to you gentlemen that mere presence when a crime is committed is, of course, not sufficient to render one guilty." You have denied that charge, a similar charge. I did want to call it to your Honor's

attention before it was too late, when we had a charge like that at the last trial.

Mr. Botts: I think your Honor is quite correct, because that was applicable to the substantive case. In line with the suggestion that I made—

The Court: While I am dealing with that, Mr. Roberts, that charge will still stand refused.

Mr. Botts: If the Court please, in line with the suggestion which I made, and for the same purpose I suggest that the following language "to do certain acts, the reasonable and probable results of which would be" should be inserted after the word "intent", being the last word in line 5 from the bottom of Page 3. It is just the same thought.

The Court: Is that in these joint instructions?

Mr. Botts: Yes, sir, on Page 3, after the two words "specific intent," being the last two words in the fifth line from the bottom of Page 3, to insert the words "to do certain acts, the reasonable and probable results of which would be,"

566 then it would continue "to deprive them of a Coonstitutional right."

The Court: No. I will leave it as it is.

Mr. Marsh: May I call one thing to the Court's attention before the jury comes back. When we submitted our charges I submitted some they had in the last trial, which included charges as to character witnesses. Mr. Botts said he had no objection, as I understood it. Is that correct?

Mr. Botts: That is right.

Mr. Marsh: I wonder if I could request that instruction be given.

Mr. Botts: I have two or three other suggestions before counsel the other way start.

The Court: Wait one minute. Let me keep track of this. As to character witnesses?

Mr. Marsh: Yes, sir. I will be glad to find that in these charges if your Honor desires.

The Court: All right. You find that, please. All right, Mr. Botts.

Mr. Botts: I had the same suggestions to make for what I conceive to be clarification on the last page, which was to insert the same language in a place there, but I assume if your Honor does not consider that necessary in the place I intended—

The Court: It would be the same thing?

567 Mr. Botts: Yes, sir, the same words in another place. The only one I have really any particular objection to is on Page 2 of Charles R. Ford's requests.

The Court: Ford you are talking about?

Mr. Botts: Yes, sir, on Page 2, Instruction No. 3. I don't think that that instruction should be given in whole; in other words, your Honor is there bringing in the issue of the substantive charge. That, I believe, would be confusing. I don't think that what another jury did in another case is the proper substance for a charge in this case. This is another case, trying another issue. Now, it is proper for your Honor to give instructions as to what is necessary in a conspiracy case, but I don't believe that it is proper, and I think it would add confusion, to inject into this what is or is not proof of a substantive charge, which is not being tried, and to refer to the result of a trial on a charge entirely different from the one that is being now tried. I think, and I very respectfully urge, that that would inject a confusing issue, which your Honor has eliminated in connection with another—with an objection to testimony which I made, and in which I think your Honor was very correct in eliminating that from the testimony. If you are eliminating it from the testimony you ought to eliminate it, I respectfully suggest, from the charge. I believe that would be confusing. So that charge I respectfully urge your Honor consider eliminating.

568 Mr. Floyd: If your Honor please—

Mr. Botts: Would you mind letting me get through with my observations as to all of these charges, then you folks can start.

Mr. Floyd; I would be very happy to, but the Court has indicated that it desires to consider them one at a time.

The Court: That is right, Mr. Botts.

Mr. Botts: If that is your Honor's desire that is all right. I thought to the converse.

Mr. Floyd: Mr. Botts has now done another about face, in that in the argument this morning when Mr. Roberts offered the certified copy of the verdict in the last trial to be admitted in evidence Mr. Botts gave as his reason then that this should not be admitted as evidence because it could very thoroughly be covered in the Court's charge. That was his reason for omitting it and asking that that document be deleted this morning. This afternoon he now tells the Court that it has no place in any respect. This, your Honor, is the reason that this charge is particularly important, whether it is brought to the jury's attention in documentary form, evidenciary form, or whether as the result of the Court's charge.

We have spent three days here listening to testimony
569 not related to a conspiracy but testimony relating solely to a substantive offense, on which the Government re-

lies to prove the conspiracy, and we are not to presume that those twelve men in that box are so well versed that they can distinguish between what is a conspiracy and what is a substantive offense, and, certainly, it is reasonable to presume that after they have been subjected to three days of nothing but substantive testimony they are going out of this room with the substantive offense in mind, and, certainly, I should think Mr. Botts, who is representing the Government, would not want them to be that confused. That is the principal reason. If we had had a lot of testimony about a conspiracy, about an agreement, about meetings being held to do these things, then I would say it would not be so important, but we have had only testimony relative to a substantive offense, and corroborative and cumulative testimony at that; everyone testified about being beaten; everyone testified about the physical condition of these men, and not about a conspiracy. That is why it is important.

Mr. Botts: I want to be heard on that exact question. I have by no means changed my position one iota. My objection is this: If they be told what another jury has done that is manifestly improper. I have no objection, if the Court
570 wants to in clarifying this issue, to giving a large part of that beginning at the bottom of Page 2, that delineates the difference between a substantive charge and a conspiracy charge. I have no objection to that portion of it; that is what I had in mind, to clarify the difference between a substantive charge and a conspiracy charge. I not only have no objection but I think that is quite proper. That was the position I took this morning and I have not receded, nor do I now, but I think that that information should be given them by way of charging them the law and not by way of a historical recounting of what another jury has done. It is to that that I object, to telling them what another jury has done. They might feel that they would find counter to what another jury has done. That is not the case. The law in the case is for your Honor to charge, and it has to be a charge on the evidence. But to tell this jury what another jury has done in another case, on testimony perhaps widely at variance to the testimony in this case, is manifestly improper. So I think this: This charge as framed, because it drags in—they have been trying eternally to drag that other trial in and have the issues determined there determinative of this case. That is what I object to. Now, a charge to the effect that this is not a trial of the substantive case, that they are not being charged with beating, that
571 they are not being charged with operating under color of law as contained in Section 52, that sort of a charge

I have no objection to. It is not here, and, therefore, the whole charge should be refused, because it is not here, and that is not because a charge embodying that legal concept would not be entirely in order, but it is because they have dragged in, and that is thoroughly objectionable and is highly improper to drag in, what another jury has done. They have been trying and trying and trying to make this a retrial of that other case, which it is not. Now, my objection is to bringing in the result of that other trial, and not to any proper delineation of the distinction between a substantive case and a conspiracy case, which distinction I think would be entirely proper to call to the attention of the jury. That has been my position all the way through with respect to the law of this case, that the law of this case is for your Honor to determine and upon which to instruct the jury. I would be glad to have a charge embodied into this, framed by counsel the other way or by your Honor, or I would be willing to attempt to do it, delineating what constitutes a substantive offense. You can get a very carefully prepared discussion of that, if you are interested in it, from the charge in the previous case on that question.

572 But to charge this jury what another jury has done as a part of explaining the law with reference to the substantive case is bringing in an issue of fact which should not be brought in in a discussion of the legal principles which are applicable. I very strongly object, and, by the way, that is the only part of this charge that I do strongly object to, and I am very strongly of the impression that that should be reframed to make it a discussion of the legal principles and not a factual discussion of what another jury has done.

The Court: Well, the action of the Court remains as announced. Are we ready now for the jury, and for argument?

Mr. Boardman: May it please the Court, I understand that Mr. Botts has submitted some instructions that were given by Judge Barksdale; is that true?

Mr. Botts: No, sir.

Mr. Boardman: For the Judge's consideration?

Mr. Botts: I just handed him that same typewritten copy that you folks had.

Mr. Boardman: As a part and parcel of those instructions that were submitted there is this language: "The fact that a person is present when a crime is committed and no more is not sufficient to convict him." I would like to submit

573 that on behalf of the Defendant Joseph V. Perry, and ask that that instruction be given at this time, for I feel that that certainly is a principle of law—whether it applies to the principle of aider and abetter makes no difference,

but it is still a principle that is well settled and one we should certainly have the benefit of, and one I believe the Court should submit to the jury for consideration, because it is true, as the Court well knows, the mere presence at the commission of a crime would not be sufficient to convict a person. It is true at various times in this trial some people were present and some were not. The fact that they did not ask any questions or participate in the beating of a specific man or they didn't want to have anything to do with it should certainly be taken into consideration by the jury. I think that instruction on behalf of the Defendant Joseph V. Perry is most urgent. While that was mentioned before I would like to mention it again on behalf of Mr. Perry.

Mr. Botts: That is the very question Mr. Roberts mentioned.

The Court: Mere presence is not sufficient?

Mr. Botts: Yes, sir.

The Court: Read that again.

Mr. Boardman: "The fact that a person is present
574 when a crime is committed and no more is not sufficient to convict him."

The Court: That request is denied. Now are we ready?

Mr. Dressler: I have a requested instruction as to Jay G. Williams. I would like to read it to the Court. I have just written it. "In a previous trial held in this court the Defendant Jay G. Williams was found guilty by a jury for the offense which is made the substantive act in each of the counts of this indictment, that is, the act which the Defendant Jay G. Williams is charged with having conspired to commit."

Mr. Botts: I think that is horrible.

The Court: Let's see that.

Mr. Botts: Why, the purpose of that is to try to get the sympathy of the jury, get them to deviate from their passing on the law and facts in this case and say, "Well, the guy has been convicted once; we don't want to convict him again." That is manifestly the purpose of that, and it is manifestly highly improper.

Mr. Marsh: I have that charge now that I referred to.

Mr. Botts: If the Court please, Mr. Marsh and I have on
575 this copy made some changes, because these instructions as given referred to two, and now it refers to one. We have made some changes that make it appropriate to Mr. Ford only, and I think as corrected there it is proper, and I have no objection to it. I hope we made all the corrections in plurals and singulars. Conceivably, we might have missed one, because we were doing it in a hurry. If the Court please, I

observe something here in these instructions to which I object (referring to another requested charge.)

The Court: Wait, Mr. Botts. Let me get through with one at a time. Mr. Dressler, in regard to this last request you make I would be disposed to give it but with the addendum "That in this case before you, however, the case against the said Williams is one of alleged conspiracy and not a charge of the commission of a substantive offense."

Mr. Dressler: That clears the distinction between the two. That is my object.

The Court: All right.

Mr. Botts: If the Court please, I am going to request the Court during the recess to give very careful consideration to this Instruction No. 3. It disturbs me. In that connection I want to call the Court's attention to some things in there that would be unjustifiable, I am sure, even if the general substance of the charge were given. Now, they were not found
576 not guilty and acquitted of the offense which is made the substantive act in each of the counts of this indictment. That is absolutely false. There is no substantive act in each of the counts of this indictment. That is just dead wrong. That is inclined to say that there is a substantive charge in each count of this indictment, and that is not true, nor is the commission of a substantive act or substantive offense the gist of any count of this indictment.

Mr. Marsh: I am willing it be changed to "overt" if the Government prefers that.

Mr. Botts: There are no overt acts in this conspiracy. I direct the Court's attention to that. I don't want to seem captious. I direct the Court's attention to that and the idea I submitted and merely, without further argument, I request the Court to give careful consideration to what I have said during the night and perhaps your Honor will feel impelled to make some alterations. All right if so, and if not I bow to your Honor's judgment.

Mr. Roberts: Unless your Honor deviates from what you have already twice ruled in the fact of Mr. Botts' strenuous objections—I had a suggestion to make, but it would be unnecessary unless your Honor deviates from your twice former rulings.

577 The Court: What was your suggestion, Mr. Roberts?

Mr. Roberts: To pacify and please Mr. Botts, who has made complaint of the language that they were found not guilty and acquitted of the offense which is made the substantive act in each of the counts of this indictment, I would substitute in there "They were found not guilty by a jury

and acquitted of subjecting and causing to be subjected the complaining witnesses, Purnell, Sturniolo, Priest and Robinson, to deprivation of the rights and privileges and immunities secured to them and protected by the Fourteenth Amendment." That is the exact phraseology of the indictment on which they were tried and acquitted. Just by changing those two or three words there that would be the exact phraseology. Then Mr. Botts would be happy and so would we be.

Mr. Botts: I would not be happy. I think that would be more accurate.

Mr. Marsh: That charge, if there is any doubt at all in the jury's mind when they hear you state that, that is explained immediately after it is read, by "To put it another way," and then the indictment is carried on through.

Mr. Botts: I want to make one observation and I am through. I think I am right. I have lived with this case for months; I have studied it, and I think I am right. I
578 challenge counsel to find a single case ever decided in a court of the United States in which a charge of this kind was given; they can't do it, because it has never been done, to recite what was done in another case. I have no objection, as I have reiterated to a charge delineating the difference between the two, but to charge the jury on the effect of another case—that is a question of law as to what effect that has, and it has no part in the determination of this jury, nor in an instruction to it, and, as I say, if these gentlemen with all their diligence and with their great practice, if they can find a single case where this has ever been done, then I will subside on that question.

Mr. Marsh: I understand the Court has ruled.

Mr. Botts: All right. I just am not surrendering my views on that question. I am urging to the Court that it reconsider, because this Court is not given to any quick decision.

The Court: Mr. Roberts, write out what you said there, will you please, and submit it to me.

Mr. Roberts: Yes, sir.

Mr. Marsh: I understood at the outset you did not desire to hear specific exceptions to the charges at this time; is that correct? I didn't want to waive the time of making
579 them: that is the only thing I am concerned with. If your Honor does wish to hear them now I wish to present mine, but if not I am quite willing to pass that. I don't wish to insist on that now.

The Court: I have ruled on the main matter of this No. 3.

Mr. Marsh: I had some specific exceptions, that is the reason. I understood the Court to imply that he did not want to hear those at this time. That is the reason I asked; if the Court

does desire to hear them now I would like to present my specific exceptions to particular charges.

The Court: You mean on this No. 3?

Mr. Marsh: No, sir; on all of them. I understood that the Court did not wish to hear those now.

The Court: No, I have heard those that have been called to my attention. I am satisfied with the charges except this one matter I am going into now.

Mr. Marsh: I just don't want to waive my specific exceptions. That is the only thing I am interested in. I don't wish to urge them now unless your Honor desires to hear them.

The Court: I have ruled on yours. Do you want to argue them further?

Mr. Marsh: I don't care to argue them at all. I just
580 don't want to waive specific exceptions to the instructions.

The Court: You are granted an exception to the actions of the Court.

Mr. Marsh: Yes, sir. Thank you.

Mr. Botts: Now, if the Court please, I take it that you would not want to start the argument now?

The Court: I rather thought I would.

(Discussion as to time of adjournment.)

Mr. Roberts: I make this suggestion, that we insert that in place of the last three lines of the first paragraph of Charge No. 3. You see, the fourth line of Charge No. 3 says, "of the offense which is made the substantive act".

The Court: Yes, sir.

Mr. Roberts: From the word "the" to the end, we will omit that, and in place of that insert what I have written out here.

The Court: Commencing at what point?

Mr. Roberts: The word "the".

The Court: At the end of that line, "the"?

Mr. Roberts: No, sir; beginning with the word "the".

The Court: "Were found not guilty by a jury and acquitted of".

Mr. Roberts: "Of", then pick up what I have writt[illegible]

The Court: That is "of" at the beginning of [illegible]e line?

581 Mr. Roberts: That is right, and the rest I have copied from the indictment.

The Court: You want that "witnesses" instead of "witness", don't you?

Mr. Roberts: Yes, sir, "witnesses"; plural.

The Court: That goes down to the end of that paragraph?

Mr. Roberts: That is right, yes, sir.

The Court: Have you seen this language, Mr. Dressler? You and Mr. Marsh come up here and let me show you what this language is.

Mr. Dressler: We have seen that.

The Court: If I adopt this you would have to change your request to conform to that.

Mr. Dressler: That is quite agreeable.

The Court: Mr. Marsh, would you have any objection to that?

Mr. Marsh: No, sir.

The Court: You would not?

Mr. Marsh: No, sir.

The Court: I have it written out here, Mr. Dressler. Will you take this and change yours, now?

Mr. Dressler: Yes, sir.

Mr. Marsh: May I have an expression from the Court on the request as to character witnesses?

582 The Court: I haven't read it over.

Mr. Marsh: It is the one Mr. Botts agreed on.

The Court: Mr. Ford was the only one who put on any character witnesses, wasn't he?

Mr. Marsh: Yes, sir.

Mr. Botts: I do trust since we have agreed once your Honor will not disagree with us.

The Court: "You have heard testimony as to the general reputation of the defendant Ford—"

Mr. Botts: Isn't the word "Ford" in there?

The Court: Yes, but you had "defendants". "—as to his being peaceable, law-abiding—"

Mr. Marsh: The word "honest" I don't believe should be in there.

Mr. Botts: The word "a" should go in there.

The Court: "—being a peaceable—" Was "honest" in your request?

Mr. Marsh: No, sir.

The Court: "Peaceable and law-abiding citizen", is that right?

Mr. Botts: Yes, sir.

The Court: "—a peaceable and law-abiding citizen".

Mr. Marsh: Yes, sir.

The Court: "You are to take such testimony into consideration and weigh it with all the other testimony intro-

583 duced in this case. If, after so doing, there is a doubt in your mind as to the guilt of this defendant Ford, and you believe the evidence as to his general reputation, and such evidence engenders in your mind a reasonable doubt as to his

guilt, it would be your duty to return a verdict of not guilty, as to him."

Mr. Botts: That is right.

Mr. Marsh: Before the jury returns I have one thing that has nothing to do with these instructions, if your Honor is ready to hear it now. It is a very short motion.

The Court: Let me get through with this other first.

Mr. Marsh: Yes, sir.

Mr. Dressler: I have written out this request: "In a previous trial held in this court, the defendant Jay G. Willams was found guilty by a jury of subjecting and causing to be subjected the complaining witnesses, Purnell, Priest, Sturniolo and Robinson, to deprivation of the rights, privileges and immunities secured to them and protected by the Fourteenth Amendment to the Constitution."

The Court: Mr. Dressler, you substitute that in place of this other one?

Mr. Dressler: Yes, sir. I withdraw the former charge that I requested.

584 The Court: I am going back now to the request of Mr. Ford, and to No. 3. I am changing the first paragraph to read as follows: "In a previous trial held in this Court, the defendants, Joseph V. Perry, John S. Bombaci, Charles R. Ford, Andrew J. Yuhas and Dania Supply Co. were found not guilty by a jury and acquitted of subjecting and causing to be subjected the complaining witnesses, Purnell, Priest, Sturniolo and Robinson, to deprivation of the rights, privileges and immunities secured to them and protected by the Fourteenth Amendment to the Constitution", and then as to the request of Mr. Williams, I am giving that with the addendum, that "In this case before you, however, the case against the said Williams is one of alleged conspiracy and not a charge of the commission—" Wait a minute, now. I will have to change that.

Mr. Botts: Would you mind reading that as it presently is, when you get it corrected.

The Court: In just a moment I will. This additional request of Mr. Williams will be given, which reads as follows: "In a previous trial held in this court the defendant Jay G. Williams was found guilty by a jury of subjecting and causing to be subjected the complaining witnesses, Purnell, Priest, Sturniolo and Robinson, to deprivation of the rights, privileges

585 and immunities secured to them and protected by the Fourteenth Amendment to the Constitution. In this case before you, however, the case against the said Williams is one of alleged conspiracy and not a charge of the said subjecting and causing to be subjected of the complaining witnesses

named to deprivation of the rights, privileges and immunities secured to them and protected by the Fourteenth Amendment to the Constitution." Mr. Botts, you wanted me to read the one as I have it, No. 3?

Mr. Botts: No, sir. I understand what the change is. I have that in my mind. Would you object to my just making a copy of that last request, because I am going to give this matter a lot of study tonight?

The Court: All right. I announced what the change was in No. 3 of Mr. Ford's requests. You understood that, didn't you, Mr. Marsh?

Mr. Marsh: Yes, sir.

The Court: Now, exceptions are noted to all rulings of the Court in favor of anyone who would be injured thereby. You had something else, Mr. Marsh?

RENEWAL OF MOTIONS FOR ACQUITTAL AND DENIAL THEREOF

Mr. Marsh: Yes, sir. At the conclusion of the taking of all evidence and after the Government and the defendants have rested and announced that they rested the defendants and each of them move a reconsideration of the motion for
586 a judgment of acquittal heretofore filed in this cause and urge that it be reconsidered, and they submit the same herewith.

The Court: What, Mr. Marsh?

Mr. Marsh: We re-submit the motion and ask that it be reconsidered, and assign the same grounds.

Mr. Dressler: There were two motions.

The Court: Two motions. One is for judgment of acquittal?

Mr. Dressler: There are two motions for judgments of acquittal, with different grounds, adopted by all the defendants.

The Court: Two motions for acquittal?

Mr. Dressler: That is all that is before the Court, a renewal of the two motions for acquittal filed at the close of the Government's case, and the Court, I understand, is denying those motions again after reconsidering them.

The Court: There were two motions, now?

Mr. Dressler: For judgment of acquittal.

The Court: With different grounds?

Mr. Dressler: With different grounds, yes, sir.

The Court: What were the different grounds?

Mr. Botts: They were stated in the written motions that were submitted this morning. They are in the record,
587 if the Court please. They are just formally renewing their motions.

The Court: I just wanted to be sure I understood just what they were.

Mr. Dressler: One of the motions was filed by Jay G. Williams, and adopted by the balance of the defendants as such, and the other motion was filed by Mr. Ford and adopted by the balance of the defendants.

The Court: One filed by Mr. Williams and one filed by Mr. Ford?

Mr. Dressler: Yes, sir.

The Court: And the same grounds as heretofore. Two motions with really the same grounds, aren't they?

Mr. Dressler: No; they are different grounds in each motion. That is the reason we filed two motions. In other words, one defendant set up different grounds that the other defendants. Mr. Williams is in a slightly different position.

The Court: Was it on the ground of res judicata and former jeopardy?

Mr. Dressler: I didn't bring the former jeopardy into my motion, because I have already brought it into the case at a former hearing, under a motion to dismiss.

The Court: The ground of your motion on the part of Mr. Williams was what?

588 Mr. Dressler: The only difference, mainly, is the fact of what appeared in the matter of newspaper articles and the multiplicity of indictments; that is the main difference. I left out that matter of judgment of acquittal on the substantive counts, of which they claim my client was convicted; I could not take advantage of that and, therefore, I had to file a separate motion.

The Court: Your motion on behalf of Mr. Ford was on what ground?

Mr. Marsh: Among others, res judicata and that the evidence was insufficient to prove a conspiracy.

The Court: All right. All motions are denied.

(Further discussion as to time of adjournment)

The Court: Let the jury come in.

(The jury then returned to the jury box.)

The Court: We will take a recess for five minutes.

(A short recess was then taken)

The Court: Are all counsel present and all defendants present?

Mr. Roberts: Yes, sir.

The Court: All right; you may proceed.

(Argument to the jury by counsel for the Government.)

589 The Court: I just asked the Clerk if he polled the jury after they had been to lunch. To make sure just poll the jury now.

(The Clerk then polled the jury)

The Court: We will recess until tomorrow morning at 9:00 o'clock.

(An adjournment was then taken until tomorrow, Friday, April 22nd, 1949, at 9:00 o'clock a.m.)

590

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF FLORIDA MIAMI DIVISION.

UNITED STATES OF AMERICA,

vs.

JAY G. WILLIAMS, JOSEPH V. PERRY, JOHN S. BOMBACI, CHARLES R. FORD, ANDREW J. YUHAS and DANIA SUPPLY CO., d.b.a. LINDSLEY LUMBER CO.,

Defendants.

No. 7334-M-Cr.

Miami, Florida,
Friday, April 22, 1949.

The above-entitled cause came regularly on for trial before the Honorable John W. Holland, United States District Judge, and a jury, duly impanelled and sworn to try the same, in open court, at Miami, Florida, on Friday, April 22, 1949, at 9:00 o'clock a.m., pursuant to adjournment on yesterday, April 21, 1949.

APPEARANCES:

Fred Botts, Assistant District Attorney, on behalf of the Government.

A. C. Dressler, Esq., of the firm of Riley & Dressler, on behalf of Defendant Jay G. Williams.

Robert L. Floyd, Esq., and Edward F. Boardman, Esq., on behalf of Defendant Joseph V. Perry.

591 John S. Bombaci, appearing in his own behalf.

John D. Marsh, Esq., on behalf of Defendant Charles R. Ford.

Ernest E. Roberts, Esq., and Edwin E. Strickland, Esq., on behalf of Defendants Andrew J. Yuhas and Dania Supply Co., d.b.a. Lindsley Lumber Co.

MOTIONS AS TO CHARGE AND ARGUMENT BEFORE JURY AND DENIAL THEREOF

(The following proceedings took place without the presence of the jury:)

Mr. Botts: I have two motions to present. The first one, I think, is well taken. The second one is the one that I deem of most importance. I will hand them to your Honor. I don't care to argue them. I have three copies of these that I will hand to counsel; that is all I have. I spent, I might say, four or five hours last night going over them. I am persuaded that both motions are sound. The second one I conceive to be the most important; that is the short one.

The Court: Are you gentlemen advised of these?

Mr. Botts: I have just handed them copies. They were not finished until five minutes ago.

The Court: Where is Mr. Bombaci?

Mr. Botts: Mr. Bombaci hasn't come in yet?

Mr. Roberts: He is out there.

The Court: He ought to come in.

592 Mr. Botts: If the Court please, I didn't realize all counsel were not here. Let the record show, please, that after all persons and their counsel were present I again tendered those two motions.

The Court: Have you given copies to all counsel?

Mr. Botts: No; I didn't have enough. I have given three copies to the six counsel.

The Court: Are all counsel and all defendants present now? Are all counsel present?

Mr. Dressler: Yes, sir.

Mr. Roberts: Yes, sir.

The Court: Now, Mr. Bombaci, you can look one of those. There are some motions that were presented. I will read them aloud.

"Comes now the United States, by its attorney, and respectfully objects to the giving of instruction as amended, numbered '3' requested by the Defendant Charles R. Ford, and, so far as applicable adopted by the other defendants, and to the giving of additional instruction offered by the defendant Jay G. Williams,—"

Mr. Botts: That refers to that yellow sheet in there.

The Court: "—and, so far as applicable, adopted by the other defendants upon the following grounds:

"1. No evidence was admitted showing the preliminary facts recited in either of said requested instructions.

593 "2. It is improper for the court to charge the existence of a fact not proven in evidence.

"3. The issue of former jeopardy, or res adjudicata, is solely a question of law, which it is improper to submit to the jury, and the court properly excluded such testimony.

"4. The question as to identity of charges, and former jeopardy or res adjudicata, being purely a question of law, to be decided by the court based upon evidence submitted to the court for that purpose, there can not possibly be any issue of fact for the consideration of the jury in respect to that matter. The jury passes only on questions of fact. Therefore, since there is no factual question involved, the matter should not be the subject of a charge.

"5. The court charges only on the law. A charge that a jury has found a verdict in a certain case, describing it, is not a charge on the law; hence is outside the proper province of the Court.

"6. Since no evidence was adduced to support the factual situation presented by said charges, manifestly it will be improper for defense attorney to argue the supposed fact, or advert to it in argument. Thus, if the charge be given, we will have the anomalous situation of the court charging

594 the existence of a fact not in evidence, which, therefore, would be improper for the parties to discuss, and involving the further anomalous situation, that the court has held on the pleadings and with respect to evidence that the matter involved is purely a question of law for the court.

"7. The giving of the charge involves the assumption that some fact therein involved should be passed upon by the jury. And if the Court submits this question to the jury the court is evading its duty to decide matters of law, and is abdicating its rights in that connection in favor of the jury.

"8. The requesting of this charge is a palpable attempt by defense to, improperly, submit and argue this question to the jury, after the court has determined that the question is solely a question of law for the court, and is, therefore a palpable attempt to circumvent and nullify the ruling of the court."

Now, the other motion:

"Comes now the United States, by its undersigned attorney, and moves the court to instruct attorneys for the defense to entirely refrain from discussing before the jury or referring to the fact of the verdict at the former trial, or arguing that the issues in that cause are res adjudicata in this cause, or that

the issues were identical, or that the verdict has precluded a trial or verdict in this cause, upon the following
595 grounds:

"1. The Court properly excluded evidence of said facts.

"2. No such facts were proven or are in issue before the jury.

"3. The question of former jeopardy, or res adjudicata are purely questions of law for the court.

"4. The Court, having properly ruled that the questions (a) of former jeopardy, or (b) res adjudicata, or (c) whether or not the charges in this trial are identical with the issues decided by the verdict as to the even numbered counts at the former trial, it is utterly improper and inconsistent to allow argument to the jury on these questions thus impliedly conceding that this jury has a right to decide said issues of law.

"5. If the Court does not grant this motion, the Court will, in effect, nullify its former rulings to the effect that the question of former jeopardy, and kindred questions, are questions of law for the Court."

The even numbered counts in the former trial—

Mr. Botts: Were the substantive counts.

The Court: Both motions are denied.

Mr. Botts: Will you hear me argue it?

Mr. Floyd: You just announced you didn't want to argue it.

596 Mr. Botts: I want to make a statement.

Mr. Floyd: We argued this same question all day yesterday.

The Court: How long do you want to argue it?

Mr. Botts: About ten minutes.

The Court: You may have ten minutes.

(Argument to the Court by Mr. Botts)

The Court: I don't think I will hear from counsel. The motions are denied. Let the jury come in.

Mr. Botts: I would respectfully ask if the Court knows of any authority to sustain that ruling other than your Honor's present ruling?

Mr. Dressler: I object to this. This is delaying this trial and carrying it on into an absurdity.

The Court: I don't think the Court is called upon to answer that.

Mr. Botts: The Court is not called upon to do that. I just

asked as a matter of information. I searched until midnight last night—

Mr. Floyd: The jury is coming in.

Mr. Botts: I try to keep myself informed of the law. If there is any law contrary to the position that I have taken I would really like to know it. That is the reason I inquired. The Court must, in going contrary to the usual practice, have some authority to sustain its position, and I would
597 really—and I say it respectfully—I would appreciate it if the Court could give me the benefit of such authority, which after diligent search I have been unable to find.

The Court: No; I can't do that in this case, Mr. Botts. Let the jury come in.

(The jury then returned to the jury box.)

The Court: Poll the jury, Mr. Clerk.

(The Clerk then polled the jury)

The Court: You may proceed.

(Argument to the jury by counsel for respective parties, after which a recess was taken until 3:00 o'clock p.m. of this date.)

AFTERNOON SESSION

Miami, Florida,
Friday, April 22, 1949,
3:00 o'clock p.m.

(Trial resumed pursuant to noon recess. Appearances same as heretofore noted.)

The Court: Are all counsel present?

Mr. Floyd: Yes, sir.

The Court: Are all the defendants present?

Mr. Floyd: Yes, sir.

The Court: Poll the jury, Mr. Clerk.

598 (The Clerk then polled the jury)

The Court: All right; you may proceed.

(Argument to the jury by counsel for respective parties, after which the Court charged the jury as follows:)

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599 COURT'S CHARGE TO THE JURY:

The Court: Gentlemen of the Jury, we are now within sight of the end of the trial of the case of United States of America against Jay G. Williams, Joseph Perry, John S. Bombaci, Charles R. Ford, Andrew Yuhas, and the corporate defendant.

You have heard the evidence in the case and the arguments of counsel, and there now only remains that I discharge my duty of declaring the law to you, and then that you retire to your room and determine from the evidence which you have heard, what the facts are in the case and apply the law as I shall give it to you to those facts, and render a true and just verdict.

Under the Federal system, the jury is not concerned with punishment. The duty and obligation of determining what, if any, punishment should be imposed upon a person who has been found guilty is solely the obligation and duty of the Judge. The question of what punishment a person might get, if any, should not concern you. That is not a part of your problem. You have one very important duty, but only one. And your duty is to determine whether these defendants, or any of them, are guilty or not guilty. And when you have done that, you have completely discharged your duties. If you should find any one or more guilty, then the burden is on me to determine what further action should be taken.

600 You have here the rather unusual situation of a corporation being a defendant. Ordinarily individuals are charged with offenses, and it is unusual that a corporation is. However, it is thoroughly legal to proceed criminally against a corporation, and although unusual, it is not infrequently done. A corporation, as you know, acts only through its officers and agents, and in order for a corporation to be found responsible, the agent against whom the charge is made must be a responsible agent. For instance, a janitor could not bind a corporation, or some inferior and irresponsible employee could not make the corporation responsible for his actions. And the acts of the agent must be within the general scope of his authority, the general scope of his employment. So, in consideration of this charge or these charges against the corporate defendant, you should determine whether or not the acts which are charged against this corporation were done generally within the scope of the authority of responsible agents or officers of the corporation. You should determine first whether or not what the officers or agents did would constitute a crime as I shall define it to you later, and further

whether or not these officers or agents were such responsible officers or agents of the company as to bind the company by what they did.

I charge you that you are the sole judges of the credibility of the witnesses and the weight to be given
601 their evidence, and in determining this, you are entitled to take into consideration their bias, their feeling, their interest in the outcome of the case, if any such appears, their manner of testifying, their candor and frankness, and any other matters which you would ordinarily consider in judging of the weight to be given to the statements of persons with whom you come in contact.

Mr. Giroux's plea of guilt to certain offenses was admitted in evidence, and you may consider that in connection with your weighing his testimony.

This indictment was returned in this court sitting here in Miami on February 25, 1949. It contains four counts, which may be briefly summarized as follows:

The four counts in the indictment are identical except as to a change in the name of the person alleged to have been abused. The indictment alleges that the acts happened on or about the 28th day of March, 1947. This exact date is not material. Any slight variation in date is immaterial.

Since the counts in the indictment except as to names of the persons alleged to have been abused are identical, I will explain to you Count One, which is the so-called Purnell count.

The explanation of this one count will serve to explain
602 to you the nature of the charge in Counts two, three and four. Count Two alleges the name of the person said to have been abused as Chester Robinson. Count Three names Henry W. Priest, and Count Four names John P. Sturniolo. As I have said, I will explain Count One and you can apply what I say to Counts two, three and four.

Count One charges that Jay G. Williams, Joseph V. Perry, John S. Bombaci, Charles R. Ford, Andrew Yuhas and Dania Supply Company, doing business as Lindsley Lumber Company, conspired to injure, oppress, threaten and intimidate Frank J. Purnell, Jr., a citizen of the United States and of the State of Florida, in the free exercise and enjoyment of the rights and privileges secured to him and protected by the Fourteenth Amendment to the Constitution of the United States, to-wit, the right and privilege not to be deprived of liberty without due process of law, the right and privilege to be secure in his person while in the custody of the State of Florida, the right and privilege not to be subjected to punishment without due process of law, the right and privilege to be

immune, while in the custody of persons acting under color of the laws of the State of Florida, from illegal assault and battery by any person exercising the authority of said State, and the right and privilege to be tried by due process
603 of law, and if found guilty to be sentenced and punished in accordance with the laws of the State of Florida, and that it was a part of the plan and purpose of the conspiracy that the defendants which I have named would on or about the 28th day of March, 1947, arrest and detain and cause to be arrested and detained the said Frank J. Purnell, Jr., and would cause the said Frank J. Purnell, Jr., to go to and into a certain building, the shack or shed of Lindsley Lumber Company on 17th Avenue in this city, and they would detain him there, and while detaining him they would then and there illegally strike, bruise, batter, beat, assault and torture him, in order, illegally, to coerce and force him to confess his guilt in connection with thefts from said Dania Supply Company, doing business as Lindsley Lumber Company, and to coerce him to name and accuse others of such thefts.

There are certain matters I should make clear to you. I want you to fully understand that these defendants here on trial are not here on trial for a violation of any law of the State of Florida, for assault, or for any other offense, that might be charged against them under the laws of Florida. Neither are they on trial here for assault under any
604 laws of the United States of America. They are on trial here on the charge of conspiring to deprive Purnell, Robinson, Priest and Sturniolo of certain rights, privileges and immunities secured and protected to them by the Constitution of the United States. The Fourteenth Amendment to the Constitution of the United States provides that "No state shall deprive any person of life, liberty or property without due process of law nor deny to any person within its jurisdiction the equal protection of the laws." This Constitutional provision also provides that Congress may pass appropriate legislation to enforce the provision of the Fourteenth Amendment which I have just read to you. After the adoption of the Fourteenth Amendment to the Constitution, many years ago, Congress passed certain laws designed to protect and enforce certain rights and privileges protected by the Constitution. It is under one of these statutes that the present prosecution has been instituted.

These rights and privileges protected and guaranteed to the people are not set out in detail in the statute. The statute contents itself with describing them in general terms as "any

right and privilege secured by the Constitution and laws of the United States." The pertinent portions of the statute are as follows: "If two or more persons conspire to injure, oppress, threaten, or intimidate any citizen in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States", they shall be punished as stated in the act from which the above was quoted. You are not concerned with the nature of the punishment. You are merely concerned with the question as to whether or not the defendants, or some of them, are guilty of violating the statute, the pertinent portions of which have been read, that is, are guilty of conspiring to deprive the persons named in the several counts of the indictment, or some one or more of them, of the constitutional rights which have been above mentioned.

It is not necessary for me to attempt to outline to you each and every one of the rights and privileges which are protected by the Constitution and referred to in the statute. You are concerned only with the rights and privileges stated in the indictment, the enjoyment and protection of which, it is alleged, the defendants conspired to deprive the said Purnell, Robinson, Priest and Sturniolo. These rights and privileges, as stated in the indictment, are as follows: (1) "The right and privilege not to be deprived of liberty without due process of law." (2) "The right and privilege to be secure in his person while in the custody of the State of Florida." (3) "The right and privilege not to be subjected to punishment without due process of law." (4) "The right and privilege to be immune, while in the custody of persons acting under color of the laws of the State of Florida, from illegal assault and battery by any person exercising the authority of said State." (5) "The right and privilege to be tried by due process of law and if found guilty to be sentenced and punished in accordance with the laws of the State of Florida." I charge you that each of these rights and privileges are protected by constitutional provision, and are within the protection of the section of the law set forth in the statute, the pertinent portions of which I have just read to you.

The constitutional provision, implemented by the statute which I have just read to you, assures to every citizen of the United States the right and privilege not to be deprived of any of the constitutionally protected rights and privileges as a result of a conspiracy of two or more persons. Every person is thereby made secure in the right not to be the subject of a conspiracy to punish by beating, punishment, or penalties other than those prescribed for every person alike. This in-

cludes the right to be tried on a charge upon which one may be arrested, to be brought by due process of
607 law into a court of the state and, if found guilty, to be sentenced and punished in accordance with the laws of the state, and also the right and privilege to be secure in his person while in the custody of the State of Florida, and the right and privilege to be immune while in the custody of persons acting under color of the laws of the State of Florida from illegal assault and battery by any person exercising the authority of said state. All these rights were secured to Purnell, Robinson, Priest and Sturniolo, along with you and me, and everyone else, by the Constitution of the United States, and the federal statute upon which this indictment is based fixes the penalties in case two or more persons conspire to prevent any citizen from enjoying the same.

This indictment, as I have told you, is based upon Section 51 of the United States Code, from which I have quoted, and, as I have told you, each count makes a charge of conspiracy. One person cannot commit this offense, because a person cannot conspire with himself, and the statute says that to be within the purview of the statute two or more persons must conspire. If there was no conspiracy, there was no offense under this section or under any of the counts of this
608 indictment. It becomes important, therefore, that you should understand clearly what is meant by conspiracy.

Perhaps I can make this clearer to you by explaining some things which are not required. It is not necessary in order for a conspiracy to exist that the parties thereto should meet and in a formal manner, either verbally or in writing, agree to do the prohibited acts. Such a formal agreement would, of course, constitute a conspiracy, but such formality is not necessary.

All that is required in order for a conspiracy to exist is that the defendants should have acted in concert with an express or implied understanding to produce a desired result.

A conspiracy has been defined to be a combination of two or more persons, by concerted action, to accomplish a criminal or unlawful purpose, or some purpose not in itself criminal, by criminal or unlawful means. It has also been defined as a partnership in criminal purposes.

No formal agreement between the parties is essential to the formation of a conspiracy, for the agreement may be deemed to have been established if there be concert of action, all the parties working together understandingly, with a single

design for accomplishment of a common purpose. While
609 the parties to a conspiracy, if there is one, should be working together understandingly, this does not mean that they would understand that what they were doing would be a violation of law. All that is necessary is that they should understand what they are doing. If what they thus understandingly cooperate to do is a violation of law, in this case a deprivation of constitutional rights, then the conspiracy will have been established, even though the participants did not know that what they were doing would in fact be deemed to have been a deprivation or violation of any person's constitutional rights.

A conspiracy may be proved by circumstantial as well as direct evidence.

I have charged you that you may consider circumstantial evidence, and I now give you a definition of circumstantial evidence, and a rule or standard by which to gauge it.

Circumstantial evidence is proof of independent facts which, if proven beyond a reasonable doubt, another fact would follow as a natural or very probable conclusion from the facts thus actually proven. Guilt established by circumstantial evidence is an inference of guilt from other facts independently proved. Proof of circumstantial evidence is proof
610 of one fact by proof of the existence of certain other facts. Guilt if established by circumstantial evidence must to the satisfaction of the jury be reasonably, naturally and probably inferred beyond every reasonable doubt from the existence of other facts proved, and such inference of guilt must be consistent only with guilt and not consistent with innocence. These independent facts or circumstantial evidence must be proven beyond every reasonable doubt as independent facts and leading to such conclusion under the rule that I have stated.

It is for you to determine from all the evidence in the case whether the acts and conduct of the defendants, as shown by the evidence, are consistent only with the guilt of the defendants and inconsistent with their innocence.

It is not necessary to guilt that all parties should have participated from the beginning or at the inception of a conspiracy. One who understandingly joins a conspiracy by coming into and joining in the execution of the plan after it has been conceived and is in operation becomes a party thereto and assumes responsibility for all that has been done before he joins, and it is immaterial at what time a defendant joined

a criminal conspiracy where it is shown that he joined with others in carrying out a common design.

611 The conspiracy is the gist of the offense. The word "gist" is a legal term which means the essential ground or object of the action in law, without which there would be no cause of action. It is the main point in issue. If you find from the evidence that a conspiracy was formed as alleged, this would justify a verdict of guilty. If you further find that its purposes were accomplished, in whole or in part, this latter fact would not add in any way to the offense. However, evidence, if any, of acts done in furtherance of the objects of the conspiracy may be important in determining whether or not there was in fact a conspiracy.

It is not necessary to the proof of the conspiracy charged here that everyone involved should have been an enthusiastic supporter of any enterprise which these men engaged in. For instance, I might ask you to endorse my note, and you might think that I was very presumptuous upon short acquaintance and be very reluctant to comply with my request, but if you did, in fact, endorse it, then you entered into an agreement, even though you did not much want to do it. So, the enthusiasm with which the enterprise was regarded by any alleged participant is not an essential ingredient in this charge. There should be no conviction, however, unless you are satis-

612 fied beyond a reasonable doubt that there was actually concerted action by understanding agreement.

I want you to clearly understand that the statute upon which this prosecution is based was not intended to cover and does not cover personal and individual acts of a group of persons in wrongfully depriving another citizen of the Constitutional rights guaranteed to him by the Fourteenth Amendment.

There is no obligation upon defendants in a criminal proceeding to take the stand and give evidence. It matters not in case they decide not to take the stand what motives prompt them to come to that decision. You must not speculate as to their reasons, and I instruct you that in your deliberations of this case you will not consider the fact that these defendants have not chosen to testify.

It is charged in the indictment that the defendants conspired to deprive citizens named therein of certain rights and privileges guaranteed them by the Fourteenth Amendment of the Constitution of the United States. The pertinent section of that Amendment reads as follows: "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State

deprive any person of life, liberty, or property without
613 due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

As you see, gentlemen, the Amendment does not apply to the acts of individuals but only to the acts of States. It was not intended to cover and does not cover personal and individual acts of two or more citizens, as such, in wrongfully conspiring to deprive other citizens of the rights enumerated in the Amendment.

Violation of the guarantees of the Fourteenth Amendment can be brought to the notice of this court in the case of individuals only when those individuals are acting under State law or color of State law.

Under the indictment, as it is framed in this case, it is essential, in order that a conviction can be sustained, that you find that these defendants, or at least two of them, conspired to utilize State law or color of State law in carrying out the objects of the conspiracy, if you should find in fact that a conspiracy was formed. If you find merely that the defendants, or two of them, conspired only to deprive the complaining witnesses of the rights enumerated in the indictment but did not intend, in doing so, to act under the laws of the State of Florida or color of the laws of the State of Florida, then it is
614 your duty to acquit them.

A municipal police officer is in the performance of his duties, as applicable to this case, acting under State law or color of State law.

The section of the United States Code, under which this indictment is drawn, does not mention the word "intent"; nevertheless, I must instruct you that an offense which is made a felony by law cannot be committed without criminal or felonious intent. An act which is committed without criminal intent is not a crime and so, in this case, it is necessary that criminal intent be proved in order that a conviction may be found. In other words, it is not sufficient that the Government merely prove that a conspiracy was formed by these defendants to do a certain thing, but it must also be proved that the defendants, or at least two of them, criminally intended to enter into the conspiracy, and intended, as the object of that conspiracy, to do a criminal act.

In order to convict under this indictment, it is necessary for the jury to find that the defendants had in mind the specific purpose of depriving the complaining witnesses of those rights guaranteed them under the Fourteenth Amendment to the Constitution of the United States, which are enumer-
615 ated in the indictment, while acting under color of the laws of the State of Florida.

The proof, if any, of a general intent to do the complaining witnesses a wrong is not sufficient, but a specific intent to deprive them of a Constitutional right, as the object of the conspiracy, if any, is a burden the law casts upon the Government. In considering whether the defendants had such specific intent, you may take into consideration all the circumstances of the case in the light of the evidence as it has been developed.

Now, intent is something that exists in a man's mind. It is impossible for you to enter into a man's mind or into the minds of defendants to determine the intent with which they acted. Therefore, their intent has to be judged by their intelligence, as shown by the evidence, by their experience in life, as shown by the evidence, and generally by judging them as reasonably prudent persons, experienced in the affairs of everyday life, judge each other, and it is the law that a person intends the usual consequences of his acts.

Neither color of law nor specific intent may be presumed by you gentlemen of the jury, but both color of law and specific intent must be proven by the Government beyond a reasonable doubt.

To return a verdict of guilty, under this indictment,
616 you must, therefore, answer the following question in the affirmative: Did the defendants, or any two or more of them, knowingly and intentionally enter into a conspiracy with the specific intent, knowingly, and while acting under color of the laws of the State of Florida, to deprive the prosecuting witnesses, or any of them, of those rights and privileges guaranteed them under the Fourteenth Amendment, which are enumerated in the indictment.

In a previous trial held in this court, the defendant Jay G. Williams was found guilty by a jury of subjecting and causing to be subjected the complaining witnesses, Purnell, Priest, Sturniolo and Robinson, to deprivation of the rights, privileges and immunities secured to them and protected by the Fourteenth Amendment to the Constitution. In this case before you, however, the case against the said Williams is one of alleged conspiracy and not a charge of the said subjecting and causing to be subjected of the complaining witnesses named to deprivation of the rights, privileges and immunities secured to them and protected by the Fourteenth Amendment to the Constitution.

In this case the Government has relied, in part, in attempting to prove its case against these defendants, upon
617 the testimony of Henry Giroux, an alleged co-conspirator or accomplice, who has become a Government witness against these defendants.

I charge you that the testimony of such a witness is competent, but I also charge you that such testimony is liable to grave suspicion, and you should always act upon it with great care and caution, and subject it to careful examination in the light of all the evidence in the case. You should consider the influence under which such testimony is given, if any, and whether the purpose of the witness is to shield himself from punishment, to obtain some benefit for himself, or to gratify his malice, and the jury ought not to convict upon such testimony alone, unless after a careful examination of such testimony in the light of other evidence in the case, you are satisfied beyond a reasonable doubt of its truth, and that you can safely rely upon it.

In a previous trial held in this court the defendants, Joseph V. Perry, John S. Bombaci, Charles R. Ford, Andrew J. Yuhas and Dania Supply Company, were found not guilty by a jury and acquitted of subjecting and causing to be subjected the complaining witnesses, Purnell, Priest, Sturniolo and Robinson, to deprivation of the rights, privileges and immunities secured to them and protected by the Fourteenth
618 Amendment to the Constitution.

To put it another way, a competent jury of this court has determined that the defendants, who I just named, did not wilfully, under color of the laws, statutes, ordinances, regulations, and customs of the State of Florida and of the municipality of Miami, subject and cause to be subjected Frank J. Purnell, Jr., Chester M. Robinson, Henry W. Priest, and John P. Sturniolo, the complaining witnesses in the present trial, to deprivation of the rights, privileges and immunities secured to each of them and protected by the Fourteenth Amendment to the Constitution of the United States, to-wit, the right and privilege not to be deprived of liberty without due process of law, the right and privilege to be secure in their persons while in the custody of the State of Florida, the right and privilege not to be subjected to punishment without due process of law, the right and privilege to be immune, while in custody of persons acting under color of the laws of the State of Florida, from illegal assault and battery by any persons exercising the authority of said State, and the right and privilege to be tried by due process of law and, if found guilty, to be sentenced and punished in accordance with the laws of the State of Florida, in that on or about March 28, 1947, the defendants ar-
619 rested and detained and caused to be arrested and detained the complaining witnesses whom I have named, and brought and caused them to be brought to and into a certain building, sometimes called a shack, on the premises of the

Lindsley Lumber Company, at or near 3180 Northwest 17th Avenue, in Miami, Florida, and did there detain the complaining witnesses, and, while they were so detained, the defendants did then and there illegally strike, bruise, batter, beat, assault and torture the mentioned complaining witnesses, in order illegally to coerce and force them to make an admission and confession of their guilt in connection with the alleged theft of personal property, alleged to be the property of Dania Supply Company, doing business as Lindsley Lumber Company, and in order illegally to coerce and force such complaining witnesses, and each of them, to name and accuse other persons of participating in alleged thefts of such personal property, and for the purpose of imposing illegal summary punishment upon such complaining witnesses.

A conspiracy is defined to be a combination of two or more persons by concerted action to accomplish a criminal or unlawful purpose or some purpose not in itself criminal by criminal or unlawful means, or, as it has sometimes been defined, a partnership in criminal purposes. While no formal
620 agreement between the parties is essential to the formation of a conspiracy, if there be concert of action, with all parties working together, understandingly, with a single design for the accomplishment of a common purpose, it is necessary, in order to form a conspiracy that the minds of the parties meet in agreement upon the object to be accomplished and all parties must work together understandingly to accomplish a certain definite object known to and understood by all, to be the purpose or object of concerted action of the parties. Thus, in order to be a member of a conspiracy a person must know and understand that there is a certain object to be accomplished and he must work together with other members of the conspiracy for the purpose of accomplishing a common object shared by all other members of the conspiracy. I wish to make it plain to you that one cannot become a member of a conspiracy, or be a party to a conspiracy, without knowing that there is a plan to accomplish a certain purpose which each member of the conspiracy must share, so, in this case, in order to prove that a conspiracy existed between the defendants, the Government must prove beyond and to the exclusion of a reasonable doubt that the minds of two or more of the defendants met in agreement upon a certain definite object to be accomplished by the concerted action of all, and that
621 two or more of the defendants, knowing and understanding the object to be accomplished, worked together for the express purpose of accomplishing the same common object upon which their minds had met, which was known to, understood by and shared by all. Of course, you must always

bear in mind that in order for the Government to prove the charge of conspiracy against all defendants, all must have known of the object to be accomplished, all must have understood the object, and all must have worked together in concert to accomplish the same object and no one can be held to have been a party to any conspiracy unless he did know and understand and work in concert with others to accomplish the same object. The existence of a conspiracy cannot be established merely by proof that two or more or all of the defendants were together at any certain time or at different times or that they participated in the same transaction unless the Government goes further and proves that they were all acting together in concert for a common purpose which must have been shared by all to accomplish a certain object which all must have understood and known to all to be the object to be accomplished. If you find that there was no such concert of acts, or no common understanding of an object to be accomplished, then
622 there can be no conspiracy. If after a fair consideration of all of the evidence there remains in your minds a reasonable doubt, arising either from the evidence or the lack of evidence, that any such common understanding existed between the defendants in this case, then no conspiracy has been proved, and you must find the defendants not guilty and acquit them.

Before you can find the defendants guilty the Government must prove to you beyond and to the exclusion of a reasonable doubt, first, that a conspiracy existed, and, second, that the defendants were parties to the conspiracy. Of course, if you find that no conspiracy existed, then that ends the matter, but, even if you find that a conspiracy did exist, the Government would still have to prove beyond and to the exclusion of a reasonable doubt that the defendants were parties to the conspiracy and, in order to do so, the Government must prove beyond and to the exclusion of a reasonable doubt that the defendants knew of the existence of a common purpose on the part of some of the other defendants to accomplish a certain specified object and that they joined in their efforts to accomplish that object and worked knowingly and understandingly in concert with them understandingly to accomplish that object, and, if the Government fails to prove that beyond and to the exclusion of a reasonable doubt, then the defend-
623 ants' connection with any conspiracy will not have been proved and you should acquit them.

I have discussed with you what must be shown to establish the existence of a conspiracy, and now I wish to call your attention to the fact that the Government must prove, first, that a conspiracy did exist, and must prove, next, that the

object of the conspiracy was to injure, oppress, threaten or intimidate Frank J. Purnell, Jr., Chester M. Robinson, Henry W. Priest and John P. Sturniolo, or at least one of them, in their enjoyment and exercise of rights and privileges secured to them by the Fourteenth Amendment to the Constitution of the United States, which are expressly enumerated in the indictment. I wish to make it clear to you that in order to be entitled to a conviction the Government must prove beyond and to the exclusion of a reasonable doubt not merely that a conspiracy existed but that a conspiracy existed having for its object the object charged in the indictment, that is, to injure, oppress, threaten or intimidate Purnell, Robinson, Priest and Sturniolo, or some one of them, in the exercise and enjoyment of rights and privileges secured to them by the Fourteenth Amendment to the Constitution of the United States, which are expressly enumerated in the indictment. Mere
624 proof of a conspiracy to commit assault and battery upon some one or all of these men is not sufficient, because that is not the charge made in the indictment. Mere proof of a conspiracy to falsely imprison some one or all of these men is not sufficient, because that is not the charge made in the indictment. The charge in the indictment is that the object of the conspiracy was to deprive these four men, or some one of them, of the rights secured to them under the Fourteenth Amendment to the Constitution of the United States, and if the Government fails to prove beyond and to the exclusion of a reasonable doubt that a conspiracy did exist and that that was the object of the conspiracy, then you must find the defendants not guilty.

The Court instructs the jury that the defendants at the outset of the trial are presumed to be innocent. They are not required to prove themselves innocent or to put in any evidence at all upon that subject. In considering the testimony in the case you must look at that testimony and view it in the light of that presumption which the law clothes the defendants with, that they are innocent, and it is a presumption that abides with them throughout the trial of the case until the evidence convinces you to the contrary beyond all reasonable doubt.

625 I charge you, gentlemen of the jury, that the indictment in this case is not to be considered as evidence. It is the first pleading on the part of the Government. It is a formal accusation in writing charging the defendants of a crime, and stating its nature. The guilt or innocence of the defendants must be determined by you from the evidence as produced during the trial. Again I repeat the indictment is not to be considered as evidence.

You are not, in your deliberations of this case, to consider anything that you may have heard said outside of this court; neither are you to consider anything that you have read in the newspapers. Your sole determination of the case is to be governed by the evidence that you have heard, with the exception that you are reminded that the defendants are considered innocent until proven guilty by the Government to your satisfaction beyond a reasonable doubt.

You are reminded that this case before you is a conspiracy indictment and not an indictment for a substantive offense. The gist of the charge of conspiracy is the intent. It is not sufficient for the Government to show that the defendants, or any of them, had a bad motive or intent. The Government must show that the defendants, or at least two of them, 626 entered into a plan and scheme to specifically deprive either Robinson, Sturniolo, Priest or Purnell of their constitutional rights as charged in the indictment. If you find from the evidence that it was not the defendants' specific intent to deprive the complaining witnesses of their constitutional rights, even though they did not act as ordinary prudent persons would have acted, then you must find the defendants not guilty.

I again charge you, gentlemen of the jury, that the defendants are not on trial for a substantive offense. By that I mean the defendants are not being tried for any beatings that may have been given the complaining witnesses, Priest, Sturniolo, Robinson and Purnell. The defendants are being tried for conspiracy. The gist of any conspiracy is the intent. Any evidence as to any beatings may only be considered by you for whatever value you may give it in deciding whether or not there was a conspiracy. Now, I remind you that there may have been beatings and still that, and that alone, would not necessarily infer that there was a conspiracy. The mere fact that you from your deliberations of the evidence find that there was a conspiracy would not in itself be sufficient to render a verdict of guilty as to any of the defendants. You must, in order to convict these defendants, find to the exclusion 627 and beyond a reasonable doubt that there was an intent to deprive the complaining witnesses of a specific constitutional right, and that right must be one of the five enumerated and set out in the indictment. If you find there was no such intent then your verdict should be not guilty.

The Court instructs the jury that the defendants at the outset of the trial are presumed to be innocent. They are not required to prove themselves innocent or to put in any evidence at all upon that subject. In considering the testimony

in the case, you must look at that testimony and view it in the light of that presumption, which the law clothes the defendants with, that they are innocent, and it is a presumption that abides with them throughout the trial of the case until the evidence convinces you to the contrary beyond all reasonable doubt.

I charge you, gentlemen of the jury, that the indictment in this case is not to be considered as evidence. It is the first pleading on the part of the Government. It is a formal accusation in writing charging the defendants of a crime, and stating its nature. The guilt or innocence of the defendants must be determined by you from the evidence as produced during the trial. Again I repeat the indictment is not to be considered as evidence.

628 You are not, in your deliberations of this case, to consider anything that you may have heard said outside of this court; neither are you to consider anything that you have read in the newspapers. Your sole determination of the case is to be governed by the evidence that you have heard, with the exception that you are reminded that the defendants are considered innocent until proven guilty by the Government to your satisfaction beyond a reasonable doubt.

You are reminded that this case before you is a conspiracy indictment and not an indictment for a substantive offense. The gist of the charge of conspiracy is the intent. It is not sufficient for the Government to show that the defendants, or any of them, had a bad motive or intent. The Government must show that the defendants, or at least two of them, entered into a plan and scheme to specifically deprive either Robinson, Sturniolo, Priest or Purnell of their constitutional rights as charged in the indictment. If you find from the evidence that it was not the defendants' specific intent to deprive the complaining witnesses of their constitutional rights, even though they did not act as ordinary prudent persons would have acted, then you must find the defendants not guilty.

629 I instruct you, Gentlemen of the Jury, that the Dania Supply Company, being a corporation, can only act through it officers and duly authorized agents, servants and employees; that as a corporation it is not bound by any acts of its officers, agents, servants or employees unless they are given express authority or clothed with apparent authority. If you find from the evidence that the agents, servants or employees were not given actual authority to commit the alleged acts or alleged acts as charged, you must then determine whether or not they were clothed with and had apparent or implied authority. If you find they did not have either actual or implied authority to act as they are alleged to have

acted, then you must find the defendant, Dania Supply Company, not guilty.

A simple test as to the responsibility of the employer is whether the acts were within the scope of the servant's employment, not whether they were done by prosecuting the master's business but whether they were done in furtherance thereof or such as may thoroughly be said to have been authorized.

If you find from the evidence that the witnesses, Purnell, Robinson, Priest and Sturniolo, were assaulted by employees of the Dania Supply Company, but that such assault was not done with the consent or direction, either expressed or implied, of the Dania Supply Company, then it is your duty
630 to return a verdict of not guilty as to the Dania Supply Company.

I again charge you, Gentlemen of the Jury, that the defendants are not on trial for a substantive offense. By that I mean the defendants are not being tried for any beatings that may have been given the complaining witnesses, Priest, Sturniolo, Robinson and Purnell. The defendants are being tried for conspiracy. The gist of any conspiracy is the intent. Any evidence as to any beatings may only be considered by you for whatever value you may give it in deciding whether or not there was a conspiracy. Now, I remind you that there may have been beatings and still that, and that alone, would not necessarily infer that there was a conspiracy. The mere fact that you from your deliberations of the evidence find that there was a conspiracy would not in itself be sufficient to render a verdict of guilty as to any of the defendants. You must in order to convict these defendants find to the exclusion and beyond a reasonable doubt that there was an intent to deprive the complaining witnesses of a specific constitutional right, and that right must be one of the five enumerated and set out in the indictment. If you find there was no such intent then your verdict should be not guilty.

During the development of evidence you heard many conversations and testimony as to occurrences at which
631 certain of the defendants were not present. You are advised that such conversations and testimony as to such occurrences are not binding on absent defendants unless what was said or done was by a member of the alleged conspiracy as such, and unless such an absent defendant was a member of the alleged conspiracy at the time or thereafter became a member thereof.

Subjecting and causing to be subjected of the complaining witnesses, Purnell, Priest, Sturniolo and Robinson, to deprivation of the rights, privileges and immunities secured to them

and protected by the Fourteenth Amendment to the Constitution is a substantive offense, but it is not the offense the commission of which these defendants stand charged. They are charged with conspiracy, which is a separate offense.

Evidence in the case relating to matters allegedly happening in the paint shack was admitted for your consideration in determining whether or not the defendants, or some of them, are guilty of conspiracy as charged in the indictment.

You have heard testimony as to the general reputation of the Defendant Ford, as to his being a peaceable and a law-abiding citizen. You are to take such testimony into consideration and weigh it with all the other testimony introduced in this case. If, after so doing, there is a doubt in your
632 mind as to the guilt of this Defendant Ford, and you believe the evidence as to his general reputation, and such evidence engenders in your mind a reasonable doubt as to his guilt, it would be your duty to return a verdict of not guilty as to him.

The Court instructs the jury that in determining the weight to be given the testimony of the different witnesses you should take into account the interest or want of interest they have in the case, if any, their manner on the stand, the probability or improbability of their testimony, with all other circumstances before you which can aid you in weighing their testimony.

The Court instructs the jury that you are the exclusive judges of the evidence and of the credibility of the witnesses. You will take the law as given you in the instructions of the Court. In weighing and reconciling the testimony you should look to the manner and demeanor of the witness in testifying, to his or her readiness and willingness, the tardiness or unwillingness, if any, in answering one side or the other, if such be the fact, whether the witness has any bias or feeling or not, to his or her relationship to any of the parties in interest, to the witness' means of knowledge of the facts
633 he testifies to and professes to know and understand, to his or her chance or opportunity of knowing the facts, to the reasonableness or unreasonableness of the story told, to its probability or improbability, to whether the witness has made contradictory statements or not about material matters involved in the case, and having thus carefully considered all the matters the jury must fix the weight and value of the testimony of each and every witness and of the evidence as a whole.

The failure of any defendant to take the witness stand and testify in his own behalf does not create any presumption against him. The jury is charged that it must not permit that

fact to weigh in the slightest degree against any such defendant, nor should this fact enter into the discussions or deliberations of the jury in any manner.

The Court instructs the jury that in determining any of the questions of fact presented in this case the jury should be governed solely by the evidence introduced before them. The jury have no right to indulge in conjectures or speculations not supported by the evidence.

The Court instructs the jury to consider the whole case under the evidence and law as herein given you and return such a verdict as you think right.

The Court instructs the jury that you are the ex-
634 clusive judges of the credibility of the witnesses, and it is your duty to reconcile any conflict that may appear in the evidence as far as may be in your power, upon the theory that each witness has sworn to the truth. If this cannot be done, you may consider the conduct of the witnesses upon the stand, the nature of the evidence given by them, how far they are corroborated or contradicted by other testimony, their interest, if any, in the case, their relation to the parties, if any, and such other facts appearing in the evidence as will in your judgment aid you in determining whom you will believe, and you may also in considering whom you will or will not believe take into account your experience and relations among men.

The Court instructs the jury that you are to try the questions in the case submitted to you upon the testimony introduced upon the trial and upon the law as given you by the Court in these instructions. The Court, however, has not attempted to embody all the law applicable to the case in any one of these instructions, but in considering any one instruction you must construe it in the light of and in harmony with every other instruction given, and so considering and so construing apply
635 the principles in it enunciated to all the evidence admitted upon the trial.

Gentlemen, the law presumes that these defendants, as well as any other person charged with a crime, are innocent until, by competent evidence, they have been proven to be guilty. The indictment raises no presumption of guilt. To the benefit of this presumption of innocence the defendants are entitled throughout their trial and it stands as their sufficient protection until it has been removed in your opinion by evidence probing guilt beyond a reasonable doubt.

The burden of proof rests upon the United States to prove beyond a reasonable doubt the guilt of the defendants before

they can be found guilty, and there must be proved all of the elements necessary to constitute the offense charged.

It is not sufficient that the defendants, upon speculative theory or conjecture, may be guilty, or that, by the preponderance of the testimony, their guilt is more probable than their innocence, for until their guilt has been proved beyond a reasonable doubt, and as charged in the indictment, the presumption of innocence still prevails.

Reasonable doubt, however, does not import a mere possible doubt, because everything relating to human affairs
636 and depending on oral evidence is open to some possible or imaginary doubt. A reasonable doubt exists if, after the entire comparison and consideration of all the evidence, your minds are left in such a condition that you cannot say you feel an abiding conviction of the truth of the charge. A reasonable doubt is not a strained conjecture, but an actual, sincere mental hesitation caused by either insufficient or unsatisfactory evidence.

Now, Gentlemen, I have here in my hand a form of verdict which you will use in the case. It is properly entitled in this court and in this case, and it reads: "Verdict. Miami, Florida, April 22, 1949. We, the jury, find the Defendant Jay G. Williams", then there are two blank lines, "and the Defendant Joseph V. Perry," then there are two blank lines, "and the Defendant John S. Bombaci," then there are two blank lines, "and the Defendant Charles R. Ford," and blank lines, "and the Defendant Andrew J. Yuhas," and blank lines, "and the Defendant Dania Supply Co., a Florida Corporation, doing business as Lindsley Lumber Co.—" The form of verdict with reference to the Dania Supply Co. is, "and the Defendant Dania Supply Co., a Florida Corporation, doing business as Lindsley Lumber Co.," and one blank line. On those blank lines you should indicate your verdict of guilt or in-
637 nocence as to each of the four counts as to each of the defendants. Of course, the proper way to indicate guilt is just "guilty", and the proper way to indicate innocence is "not guilty". And the verdict concludes with the words "so say we all," indicating that your verdict must be unanimous. Then there is one blank line down to the lower right, under which the word "foreman" appears, and your verdict must be signed by one of your number as foreman.

The Clerk will give you the indictment and the exhibits in the case and that form of verdict. You may retire now to consider of your verdict.

Before you go out, though, let me consider this: It is six o'clock. Let me take a poll of the jury. Would you rather let

the Marshall bring your dinner here in the juryroom, and let you go right to work? (All jurors indicate in the affirmative) I will take it that is unanimous.

Now, Mr. Marshall, you can get them dinner, can't you, not just get sandwiches, but get a good dinner, and bring that up to them, and in that way you can start right to your consideration of the case. So, you may retire now, gentlemen.

A juror: May I ask a question?

The Court: Yes, sir.

638 The Juror: I am not sure that I understand the question as to acts under color of law. In some cases that is definite, and in others there are some of the defendants who apparently had no legal authority, and what am I to understand about that, now, as to whether they were clothed with legal authority, by inference or otherwise?

The Court: Well, it is not necessary that each defendant be clothed with authority under color of law, but the question is: Did the defendants conspire with a person or persons acting under color of law.

The Juror: I think that makes it clear to me.

The Court: All right. You may retire.

(Thereupon, at 6:00 o'clock p.m., the jury retired to consider of their verdict.)

COLLOQUY RE EXCEPTIONS TO CHARGE

The Court: As to the written requests, I believe I have indicated heretofore—If I haven't, I will indicate clearly now that exceptions are noted as to the non-giving in exact form or the giving in altered form of any written request and, likewise, an exception is noted for the opposite side to a requested instruction that was given, either in its unchanged form or in its changed form. Now, in addition to those automatically granted exceptions are there any others? Any from the

639 Government first?

Mr. Botts: If the Court please, of course, the Government is without remedy where a charge was given which I conceive to be improper. However, I would like to direct the Court's attention to the method followed by the Court which has so greatly prejudiced the Government in this respect: There is no question but what it is proper to charge that a person must be found guilty beyond and to the exclusion of a reasonable doubt, but because there were six defendants and each one of them requested charged, and there was a charge by the Government which involved that proper charge, I find that on five different occasions your Honor has charged that.

Now, that unfairly to the Government called attention and reiterated that very thing. Now, in addition, the Court charged the law in this wise: "While the parties to a conspiracy, if there is one, should be working together understandingly, this does not mean that they would understand that what they were doing would be a violation of law." That was in the charge requested by the Government, and that is proper, but, yet, on five different occasions your Honor charged them that in order to convict under this indictment it is necessary for the jury to find that the defendants had in mind the specific purpose of depriving the complaining witnesses of their
640 guaranteed rights, and without explaining that it was necessary that they should know what they were doing, but that it was not necessary for them to know that it was a violation of law, thereby nullifying five times the effect of the proper instruction that was given. In other illustrations of that same thing the Court read instructions requested by the Defendant Yuhas and by the Defendant Lindsley Lumber Company, both prepared by the same counsel, and read twice to the jury, the identical charge in identical words on certain questions. Now, that must necessarily have impressed the jury that the Court was emphasizing those things. The Court didn't mean to do that, but it had that effect, and I don't know of any way that the Court can cure the harm that was done to the Government's case by that method, by charging properly on the question that they didn't need to know what they were doing would be a deprivation and then charging five different times, as the Court did, that it was not necessary for them to know that it was a violation of law. I don't know anything that can be done about it, but it is, of course, possible that there might be a mistrial in this case, as there was the other time. I am saying this so that if we should ever try this case again I trust that the Government will not be subjected to that rather prejudicial method of charging.

641 The Court: Any exceptions from the defendants?

Mr. Marsh: If the Court please, I believe that the last instruction that the Court gave in answer to a question from the juror should be clarified. As I recall it, the Court instructed the jury then that there must be a conspiracy with someone who was acting under color of law, which, I believe, is prejudicial to my client, since he was a police officer and the only police officer. I believe that the gist of this thing is conspiracy between several people, or two or more, to do something under color of State law. That would not necessarily mean that they had to conspire with somebody who was a police officer or with someone who was a special police officer.

It would mean they would conspire to get someone who had that authority under State law to do the act, but that person himself might have been innocent of any conspiracy if he entered into this thing innocently; in other words, two of these people might have conspired to get a police officer to do the act and they might be guilty of the conspiracy and he, on the other hand, might not be guilty of the conspiracy. The charge as is given by the Court now almost makes it imperative that this jury convict my client if they convict anyone.

The Court: Any others from any of the defendants?

Mr. Floyd: No, sir.

The Court: Or the Defendant Bombaci, representing
642 himself, any other exceptions?

Mr. Bombaci: No, sir.

The Court: Do you see any merit to that, Mr. Botts?

Mr. Botts: No, sir. I think if his client happens to be in that peculiar vulnerable position it is not to his prejudice that the Court gives a proper instruction on that point.

The Court: You think the instruction I gave was proper?

Mr. Botts: I don't think it was improper.

The Court: Read that instruction I gave.

(The last instruction the Court gave in answer to the Juror's question was thereupon read by the reporter.)

Mr. Botts: That is a correct statement. You didn't say they had to conspire with an officer; you said they had to conspire with somebody acting under color of State law.

Mr. Marsh: I am sure that is the impression the jury got. That is what I wish to have clarified.

Mr. Botts: The language is clear. You will note you didn't say to conspire with a person who was clothed with State law, but who was acting under color of State law.

The Court: That is right. Read Mr. Marsh's state-
643 ment.

(The Statement made by Mr. Marsh was thereupon read by the reporter.)

Mr. Marsh: I still say it would be possible to convict under this without convicting anyone who was acting under color of State law. Two people could conspire to use someone who was acting under State law, to use him as their tool to accomplish their purpose, and that is exactly the impression I believe that this jury will get, that they must have conspired with one of these police officers, and my client is the only one who was a police officer.

Mr. Botts: I don't think your Honor is entitled to presume that the jury will misunderstand the instructions.

Mr. Marsh: I misunderstood it, Mr. Botts.

Mr. Botts: When you hear it read now it is perfectly clear.

Mr. Marsh: I only heard it read once, when the jury did.

The Court: You make that as an exception?

Mr. Marsh: I made it as a motion. I will wait for your Honor's ruling on it.

The Court: The motion is denied.

Mr. Marsh: Will the Court note my exception to the
644 ruling?

The Court: Yes, sir. Now, Mr. Botts, your exception with reference to the intent. I overrule that. Of course, I did a lot of repeating in there, but I expect that it would be prejudicial to—

Mr. Botts: There is nothing we can do about it now. I know how it came about; it was because there were so many defendants. But I do think that that is a matter that ought to be considered should a future case arise with a number of defendants, not to give multiple instructions along the same language, thereby emphasizing it, simply because there happens to be a number of defendants who request in substance the same instruction. There is nothing that can be done about it now.

The Court: All right. The Court will be in recess.

(A recess was then taken until 9:10 o'clock p.m. of this date, at which time the jury returned into court with the following verdict:)

645 "IN THE UNITED STATES DISTRICT COURT IN AND FOR THE SOUTHERN DISTRICT OF FLORIDA

No. 7334-M-Cr.

"UNITED STATES OF AMERICA

Versus

JAY G. WILLIAMS, JOSEPH V. PERRY, JOHN S. BOMBACI, CHARLES R. FORD, ANDREW J. YUHAS and DANIA SUPPLY CO., a Florida corporation doing business as Lindsley Lumber Co.,

Verdict.

Verdict—April 22, 1949

Miami, Florida,
April 22, 1949.

"We, the Jury, find the defendant, Jay G. Williams, Guilty.
and the defendant, Joseph V. Perry, Guilty.
and the defendant, John S. Bombaci, Guilty.
and the defendant, Charles R. Ford, Guilty.
and the defendant, Andrew J. Yuhas, Guilty.
and the defendant, Dania Supply Co., a Florida corporation doing busness as Lindsley Lumber Co., Guilty.

So Say We All.

(Signed) Gordon B. Certain.
Foreman."

(Thereupon, the trial was concluded.

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646 IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION.

UNITED STATES OF AMERICA

VS.

JAY G. WILLIAMS, JOSEPH V. PERRY, JOHN S. BOMBACI, CHARLES R. FORD, ANDREW J. YUHAS and DANIA SUPPLY CO., d.b.a. LINDSLEY LUMBER CO.,

Defendants.

No. 7334-M-Criminal.

Miami, Florida,
Monday, May 23, 1949.

The following proceedings in the above-entitled cause came regularly on for hearing before the Honorable John W. Holland, United States District Judge, in open court, at Miami, Florida, on Monday, May 23, 1949, at 10:00 o'clock a.m., pursuant to notice.

APPEARANCES:

Fred Botts, Assistant District Attorney, on behalf of the Government.

A. C. Dressler, Esq., of the firm of Riley & Dressler, on behalf of Defendant Jay G. Williams.

Robert L. Floyd, Esq., on behalf of Defendant Joseph V. Perry.

Defendant John S. Bombaci appearing in his own behalf.

647 John D. Marsh, Esq., on behalf of Defendant Charles R. Ford.

Ernest E. Roberts, Esq., and Edwin E. Strickland, Esq., appearing on behalf of Defendants Andrew J. Yuhas and Dania Supply Co., d.b.a. Lindsley Lumber Co.

Motions after Verdict and Rulings Thereon

The Court: Now, Gentlemen, we will proceed with the hearing of motions of all character in the Civil Rights case.

Mr. Dressler: I believe the matters here will be quite brief. In line with the motion for a new trial filed on behalf of this defendant, Jay G. Williams, there is reference made in the 6th ground of the motion as to a perjury indictment pending in this case and pending at the time of this trial, and I have in my hand here the original copy of the indictment in Case No. 7333-M-Criminal, filed by the United States of America against four defendants, Williams, Ford, Bombaci and Yuhas, and I would like to introduce this copy of the indictment as a part of my motion for new trial insofar as Jay G. Williams is concerned, as to Counts numbered 1, 2, 13, 14, 15, 25, 26, 27, 37, 38 and 39 of the indictment in Case No. 7333-M-Criminal.

The Court: I see no objection to letting that be considered.

Mr. Botts: No, sir; I have no objection.

648 The Court: You move that it be filed?

Mr. Dressler: Yes, as part of the evidence in support of the motion for new trial.

The Court: That motion is granted.

Mr. Dressler: And in support, I might say, of the other motions in the case where that particular case was referred to.

The Court: Let it be so considered.

Mr. Dressler: Continuing with my motion, the main elements of the objections and points we have raised in our motions have been already ruled upon by this Court, that is to say in the motion to dismiss and in the various motions as we went along in the trial, and your Honor has made its ruling on those various matters, and unless your Honor wishes further argument on any of those matters I see no reason to take up the time of the Court further on those same grounds.

The Court: The motions filed by Mr. Dressler are denied. That is for the Defendant—

Mr. Dressler: Jay G. Williams.

The Court: All right. Are all the defendants in court this morning? Will they speak up and let the record show, please, that they are here.

Mr. Dressler: Jay G. Williams is here.

Mr. Marsh: Charles R. Ford is here.

649 Mr. Floyd: Joseph V. Perry is here.

Mr. Roberts: Andrew J. Yuhas is here, and so is the Dania Supply Company.

Mr. Bombaci: John S. Bombaci is here.

The Court: That is all, isn't it?

Mr. Roberts: Yes, sir.

Mr. Marsh: In addition to the motion in arrest of judgment and the motion for a new trial I wish to call your Honor's attention to the fact that Ford has filed a renewal of his motion for judgment of acquittal, which motion was filed within the time provided by the rules. I take the same position that Mr. Dressler does in regard to the remainder of my motions, with one exception, which I will develop in a moment. While I argue that the motions are sound and that the grounds of them are sound, I think there is no need for further argument, since they have all been presented to your Honor in the course of this trial, with the exception of one which was argued, which I wish to call your Honor's attention to further; that is in Ground 17 of Defendant Ford's motion for a new trial. Your Honor will recall at the conclusion of the testimony and after the Court had charged the jury one of the jurors made an inquiry, after which the Court charged—This is on Page 4 of Ford's motion for a new trial.

650 The Court: Wait one minute.

Mr. Marsh: The Court then charged the jury: "It is not necessary that each defendant be clothed with authority under color of law, but the question is: Did the defendants conspire with a person or persons acting under color of law."

At the time that instruction was given counsel requested the Court to clarify the instruction so that the jury would not have it in their minds that it was necessary in order to bring in a conviction of any one of the defendants that there must have been a conspiracy with someone who is alleged or who is proven to be have been acting under color of law. The only defendant who was really shown by competent evidence to have been acting under color of law was the Defendant Ford, and that necessarily required of the jury that they find Ford guilty, if they found any one guilty. Now, I consider that the statute under which he is tried does not mean that they must

have conspired with someone who was acting under color of law, but that they use someone acting under color of law to obtain the results for which they were seeking. It would not necessarily follow that this person who would be the tool of the conspiracy would be one of the conspirators, but a police officer could be present and not be a part of the con-
651 spiracy, and he could be the tool with which the conspirators gained their purpose without being a member of the conspiracy. I believe, therefore, that the charge that was given by the Court was, at least, misleading insofar as the jury is concerned. I don't believe that they would understand the true meaning of the law under that instruction.

The Court: Mr. Botts, we went over that at the time, didn't we?

Mr. Botts: Yes, sir. That has all been covered. It is applicable to the facts in this case. The charge is all right, as applied to the facts in this case, I am sure.

The Court: All right. The motions that have been referred to by Mr. Marsh—That is referring to Mr. Ford, isn't it?

Mr. Marsh: Yes, sir.

The Court: They are denied.

Mr. Roberts: On behalf of the defendant Yuhas we join Mr. Dressler in the introduction of the copy of the perjury indictment insofar as the counts therein pertain to him. We have no further argument to make.

The Court: You make a motion that that be admitted in evidence incident to your motion as to the Defendant Yuhas?

652 Mr. Roberts: Yes, sir.

The Court: Just the defendant Yuhas?

Mr. Roberts: That is right.

The Court: That motion is granted.

Mr. Roberts: Mr. Bombaci has no counsel. Perhaps we should ask that that be put in insofar as it may be applicable to him also, and let him have the benefit of it.

Mr. Botts: No objection.

The Court: That is granted and so considered as incident to Mr. Bombaci also. What about your corporate defendant?

Mr. Roberts: Well, the corporate defendant was not indicted in the perjury indictment.

The Court: It would not be applicable to the corporation, then?

Mr. Roberts: That is right. I only have this one observation to make, which has been advanced before, but to refresh your Honor's mind, the effect of the motion for arrest of judgment is that the defendant Yuhas and the Dania Supply Company, before tried as the Lindsley Lumber Company, were acquired

in the first trial of aiding and abetting in the commission of the substantive offense, and we merely take the position that having been acquitted of aiding and abetting, therefore,
653 they could not have participated in any conspiracy.

The Court: All motions that are made to which reference has been made by Mr. Roberts are denied. The motion you made as to the document, the perjury indictment, I have allowed that in the record to be considered in connection with Mr. Yuhas and in connection with Mr. Bombaci.

Mr. Floyd: The Defendant Perry concurs in the statement of Mr. Dressler and has no further argument on the points advanced during the trial and prior to the trial.

The Court: That is for the Defendant Perry. What about this perjury indictment?

Mr. Floyd: The Defendant Perry has never been indicted for perjury. He was one defendant who was left out of that indictment, in addition to the Dania Supply Company.

The Court: You have no motion in regard to the perjury indictment?

Mr. Floyd: No, sir.

The Court: The motions made by the Defendant Perry, to which reference has been made in this argument by Mayor Floyd, are denied.

Mr. Marsh: The Defendant Ford also requests that the indictment offered in evidence and received be incorpo-
654 rated in his motion for arrest of judgment.

The Court: That is the same motion in regard to the perjury indictment?

Mr. Marsh: Yes, sir.

The Court: That motion is that it be incorporated?

Mr. Marsh: Incorporated in the motion for arrest of judgment and for a new trial.

The Court: That motion is granted. I believe that takes care of everything except Mr. Bombaci's motion. Do you wish to argue that, Mr. Bombaci?

Mr. Bombaci: No, sir.

The Court: The motions of Mr. Bombaci are denied, only I have allowed the perjury indictment to be made a part of his motion. I believe I have got that right now. The perjury indictment, to which other counsel have referred, is considered and made—not only considered, but is made a part of the motion or motions of Mr. Bombaci. Would it be motion or motions? Anyway, the prejury indictment, if incident to both of his motions.

Mr. Botts: Let's assume it is. Let it be in there if it is.

The Court: All right. The perjury indictment is considered and it is in the record as a part of the motions of Mr. Bombaci.

Mr. Botts: In order to be sure that the record is
655 clarified in this respect: Your Honor has said in one or two instances "That motion is granted," which I am sure we all here understood to mean the motion for leave to file the indictment.

The Court: That is correct.

Mr. Botts: But I just wanted to have it clear for the record, that the only motion that was granted is the motion for permission as to each applicable defendant to file in evidence as a part of his applicable motion a copy of the perjury indictment, and that as to all of the other motions for new trial, arrest of judgment or judgment of acquittal, those motions are denied as to each and every defendant.

The Court: That is correct; they are denied; under your clear statement they are denied, that is, all motions other than the motions to make the perjury indictment a part of the applicable motions.

Mr. Botts: Yes, sir. I am sure we all here understood it, but for the record, it might be that in reading the record that would not be perfectly clear. I just wanted to be sure it was clarified.

The Court: I think we have a clear understanding now. Do you not think so, Mr. Botts?

Mr. Botts: Yes, sir.

656 (A copy of the indictment in Case No. 7333-M-Criminal was thereupon filed with the Clerk, and made a part of the record herein.)

The Court: Mr. Jay G. Williams, will you come forward?

(The Court then pronounced sentence and fixed the amount of appeal bond as to each defendant, after which an adjournment was taken.)

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657 Reporter's Certificate to foregoing transcript omitted in printing.

658 IN UNITED STATES DISTRICT COURT

Motion of Jay G. Williams in Arrest of Judgment—Filed April 27, 1949

Comes Now the Defendant, Jay G. Williams, and moves that the verdict of guilty returned against him by a jury in this Court be arrested and no judgment and sentence be imposed thereon for the following reasons:

1) That the indictment does not state facts sufficient to constitute an offense against the United States of America.

2) Said Section 51, Title 18, United States Code (1946 Ed.) is unconstitutional because it is vague, uncertain, indefinite and insufficient, and an Indictment based thereon does not apprise a defendant of the true ca se and character of the accusation he is called upon to def d, and for that a conviction or acquittal under an Indic ent based on said Section would subject the defendant to substantial danger of another prosecution for the same offense.

3) That each of said counts charges no more than an assault and battery of which this Court has no jurisdiction.

4) That heretofore to-wit, an indictment was filed against the Defendants, Jay G. Williams, Joseph V. Perry, John S. Bombaci, Charles R. Ford, Andrew J. Yuhas and Lindsley Lumber Co., a corporation, in this Court by the United States of America as Plaintiff in case No. 7279-M-Criminal, charging violation of Title 18 U. S. C., Sections 51 and 52 Civil Rights (1946 Ed.), and the said Defendants after being arraigned and having plead not guilty to said indictment in said case numbers 7279-Miami-Criminal of this Court, were, on January 17, 1949 tried before a jury duly empaneled and sworn to try said cause, and on January 21, 1949, a verdict of guilty was returned by said jury as to Jay G. Williams on Counts numbered 2, 4, 6 and 8 of the said indictment in case No. 7279-M-Criminal, and that the said jury was unable to agree to any said Defendant in said case No. 7279-M-Criminal
659 on Counts 1, 3, 5 and 7 of said indictment, and that on February 11, 1949 as to Jay G. Williams in said case No. 7279-M-Criminal, this Court entered judgment and commitment of one (1) year on each count of said indictment, that is to say, counts 2, 4, 6 and 8, to run consecutively as to said Jay G. Williams, or a four-year sentence in all. A copy of said indictment and a certified copy of the verdict in said case No. 7279-M-Criminal has been identified and offered in evidence and made a part of the record of the instant case, and the same is offered as a part of this Motion in Arrest of Judgment as though the same were fully set out herein, and that said judgment and conviction still remains in full force and effect and not in the least reversed or made void.

And the said Defendant, Jay G. Williams, in the instant case is one and the same person as the defendant in this cause, as are the other individual defendants herein.

That the Indictment under which this Defendant, Jay G. Williams was convicted, contains the same offense under its general charges in the said four (4) counts in Case No. 7279-M-Criminal, that is to say, Counts numbered 2, 4, 6 and 8, and that the charge made in the said four counts of the indictment

in case numbered 7279-M-Criminal is also included within the indictment in the instant case, and that the said Defendant, Jay G. Williams having been convicted under the prior indictment in case No. 7279-M-Criminal herein, ought not to be convicted under the indictment in the instant case, nor should the said defendant, Jay G. Williams be tried successively, and the said Defendant, Jay G. Williams alleges that the evidence necessary to support this indictment herein, would have been sufficient to procure the conviction of this Defendant under the first indictment, as all charges against the Defendant, Jay G. Williams are based upon the same act, and that
660 therefore, this second prosecution by this indictment ought to be dismissed against the defendant, Jay G. Williams.

The Defendant, Jay G. Williams, because of the above facts showing former jeopardy that the Defendant's constitutional rights under the Fifth Amendment to the Constitution, are being violated herein, and prays that he may be dismissed and discharged from said indictment filed in the instant case.

A. C. Dressler
Attorney for Defendant,
Jay G. Wlliams

IN UNITED STATES DISTRICT COURT

Motion of Jay G. Williams for New Trial—
Filed April 27, 1949

The Defendant, Jay G. Williams moves the Court to grant him a new trial for the following reasons:

1) The Court erred in denying this Defendant's motion for acquittal made at the conclusion of the Government's case.

2) The Court erred in denying this Defendant's motion for acquittal which was renewed at the conclusion of the entire case.

3) The verdict is contrary to the weight of the evidence.

4) The verdict is not supported by substantial evidence.

5) The Defendant was substantially prejudiced and deprived of a fair trial by reason of the following circumstances:

The Government abused its discretion in refusing the joint motion of the defendants that the jury be polled separately and examined as to whether or not they had each read
661 the newspaper articles in The Miami Herald and The Miami Daily News appearing therein after the jury had been empaneled and sworn, and whether or not they each had as a result thereof, if said articles were so read by any of them, formed an opinion that could be passed upon as a matter of

law by the Court as to any prejudice therefrom resulting as to this Defendant, or any other defendant.

6) The Defendant was substantially prejudiced and deprived of a fair trial by reason of the following circumstances:

That this Defendant was not afforded due process of law under the Constitution of the United States because of the multiplicity of indictments filed against him by the Government based on the transactions and same alleged offenses shown in the indictment herein, including the filing of perjury charges against this Defendant in case No. 7333 of this Court, and the Court abused its discretion in not declaring a mistrial herein as to this Defendant, who has already been sentenced to a four year term in case No. 7279-M-Criminal of this Court.

7) The Defendant was substantially prejudiced and deprived of a fair trial by reason of the following circumstances:

That this Defendant was not afforded due process of law under the Constitution of the United States by the filing of unwarranted perjury charges against him in case No. 7333 and resulted in coercing the Defendant not to make any defense herein for fear of further perjury charges being filed against him by the Government in any attempt to defend himself in the instant case.

8) The Defendant was substantially prejudiced and deprived of a fair trial by reason of the following circumstances:

662 The Government has failed to prove by competent evidence that the Defendant committed any of the acts alleged in the indictment while acting under any color of the laws of the State of Florida.

9) The Court erred in denying the Defendant's motions for a mistrial.

10) The Court erred in over-ruling and denying the motion of the Defendant to dismiss the indictment herein.

A. C. Dressler
Attorney for Defendant,
Jay G. Williams,
1030 Seybold Building
Miami, Florida

IN UNITED STATES DISTRICT COURT

Motion of Charles R. Ford in Arrest of Judgment—Filed April 27, 1949

On April 27, 1949 defendant, Charles R. Ford's Motion for Arrest of Judgment was filed in words and figures as follows:

CHARLES R. FORD, one of the defendants herein, by and through his undersigned attorney, moves that the Court arrest judgment herein for the following reasons and upon the grounds hereinafter stated.

1. The indictment does not charge an offense cognizable under the laws of the United States.

2. The indictment attempts to charge this defendant, an individual, with conspiring with other individuals to deprive certain named citizens of rights and privileges alleged to be secured such citizens by the Fourteenth Amendment to the Constitution of the United States, which Amendment is not designed to and does not protect citizens from deprivation of such rights and privileges by the actions of individuals, but only from such deprivation by the actions of State.

3. Section 51, of Title 18, of the United States Code, under which the indictment is found, as construed by the Court in the course of these proceedings, and especially as construed by the Court in overruling the several motions of the defendants to dismiss the indictment, is unconstitutional and void in that it attempts to recognize and make punishable by the
663 United States an act wholly cognizable by and within the jurisdiction of the State of Florida.

4. It was attempted by the Government to prove the charge of conspiracy in this case by attempting to prove only that this defendant participated with the other defendants herein on March 26, 27, and 28, 1947, in arresting and detaining and causing to be arrested and detained the complaining witnesses, FRANK J. PURNELL, JR., CHESTER M. ROBINSON, HENRY W. PRIEST and JOHN P. STURNIOLO, causing them, the complaining witnesses, to go into a certain building, sometimes called a shack, on the premises of the Dania Supply Co., at or near 3180 Northwest 17th Avenue, Miami, Florida, detaining them, the complaining witnesses, in the said shack and, while so detained, illegally striking, bruising, battering, beating, assaulting, and torturing them, in order illegally to coerce and force the complaining witnesses to make admissions and confession of their guilt in connection with the alleged theft of personal property alleged to be the property of the said Dania Supply Co., and in order illegally to coerce and force the said complaining witnesses to name and accuse other persons as participants is alleged thefts of personal property alleged to be the property of the said Dania Supply Co., * * * and for the purpose of imposing illegal summary punishment upon the said complaining witnesses.

There has been filed in this cause, in support of this defendant's motion for a judgment of acquittal, a copy, stipulated to

be a true copy, of the indictment in cause numbered 7279-M-Cr., entitled United States of America vs. Jay G. Williams; Joseph V. Perry; John S. Bombaci; Charles R. Ford; Andrew J. Yuhas and Lindsley Lumber Co., a corporation, which indictment was, in the course of the trial of that cause, amended so as to change the name of the last mentioned defendant to Dania Supply Co.

There has also been filed in this cause a copy of the Court's charge to the jury in cause numbered 7279-M-Cr., and a certified copy of the verdict of the jury returned in such cause.

664 The three mentioned instuments and documents are incorporated herein, and made a part hereof by reference.

It affirmatively appears from the indictment in cause numbered 7279-M-Cr., which was tried in this Court, from the jury charge and from the verdict that this defendant was found not guilty of doing, or participating, with others in doing the acts above set forth which the Government attempted to use as the sole proof of conspiracy in the instant case. Also, in view of the instructions to the jury, it appears affirmatively that this defendant was found not guilty of aiding, abetting, encouraging, counseling, commanding, inducing, procuring, or in any way assisting any other person to commit the acts attempted to be proved against this defendant in this case.

The Government, having failed to offer proof of a conspiracy by evidence other than that tending to prove complicity by this defendant in the acts above mentioned, the verdict of guilty in the instant case is inconsistent with the verdict of not guilty, previously returned in cause numbered 7279-M-Cr. and the questions of fact, raised by evidence adduced by the Government, have been adjudicated favorably to this defendant; therefore, this defendant submits that a judgment of guilty in the case in bar would be in violation of the Due Process Clause of the Fifth Amendment to the Constitution of the United States in that such a judgment would be contrary to the common law principle of res judicata.

Respectfully submittd,
John D. Marsh
JOHN D. MARSH
1402 Courthouse
Miami, Florida
Attorney for Charles R. Ford

RECEIPT of a copy of the above Motion is hereby acknowledged, this the 27 day of April, A. D. 1949.

ASSISTANT UNITED STATES DISTRICT ATTORNEY
By Fred Botts

665 IN UNITED STATES DISTRICT COURT

Renewal of Motion of Charles R. Ford for Judgment of Acquittal—Filed April 27, 1949

At the conclusion of the Government's case and after the Government had rested, the defendant, CHARLES R. FORD, filed with the Clerk and thereafter argued to the Court a Motion of CHARLES R. FORD for a Judgment of Acquittal.

Thereafter, at the conclusion of the taking of all evidence and after the Government and the defendants had all announced that they rested, the defendant, CHARLES R. FORD, resubmitted his Motion for Judgment of Acquittal to the Court.

The defendant, CHARLES R. FORD, now, within five days after the jury has been discharged, renews his Motion for a Judgment of Acquittal upon the grounds and for the reasons stated in his original Motion for Judgment of Acquittal, which has been filed in this cause and which this defendant incorporates herein and makes a part hereof by reference.

Respectfully submitted,
John D. Marsh
JOHN D. MARSH
1402 Courthouse
Miami, Florida
Attorney for Charles R. Ford

RECEIPT of a copy of the above Motion is hereby acknowledged, this the 27 day of April, A. D. 1949.

Assistant United States District Attorney
By Fred Botts

666 IN UNITED STATES DISTRICT COURT

Motion of Charles R. Ford for New Trial—Filed April 27, 1949

CHARLES R. FORD, one of the defendants herein, by and through his undersigned attorney, moves the Court to set aside the jury's verdict of guilty, returned in this cause, and to enter an appropriate order herein granting to this defendant a new trial for the following reasons:

1. The verdict is contrary to law.
2. The verdict is contrary to the evidence.
3. The Court erred in denying this defendant's motion to dismiss the indictment.

4. The Court erred in denying this defendant's motion for leave to amend his motion to dismiss the indictment.

5. The Court erred in overruling this defendant's objection to evidence tending to prove complicity by this defendant in the commission of acts charged as the overt acts in each count of the indictment, made upon the ground that this defendant had been previously acquitted of complicity in the commission of such acts and that the question of his participation in the commission of such acts is res judicata.

6. The Court erred in denying this defendant's motion to strike testimony tending to show his pariticpation in the commission of the overt acts charged in the indictment made upon the ground that this defendant had been previously acquitted of the commission of such acts.

7. The Court erred in overruling this defendant's objections to testimony of Government witnesses as to statements made by parties other than this defendant and out of the hearing of this defendant, such objections being made upon the ground that such testimony is hearsay.

667 8. The Court erred in denying this defendant's motions to strike testimony of Government witnesses of statements made by persons other than this defendant and out of the hearing of this defendant upon the ground that such testimony is hearsay.

9. The Court erred in overruling this defendant's objections to, and in denying this defendant's motion to strike, the testimony of the Government witness, Mrs. Heny Priest, relating to events which she stated occurred at her house on the evening of March 27, 1947, such objection and motion being made upon the ground that such testimony is irrelevant and immaterial to the issues of this cause.

10. The Court erred in denying this defendant's objections to, and in denying this defendant's motion to strike, the testimony of Government witnesses tending to show the extent of injuries sustained by the complaining witnesses, Frank J. Purnell, Jr., Chester M. Robinson, Henry W. Priest and John P. Sturniolo, such objections and motions being made upon the ground that such testimony is irrelevant and immaterial to the issues of this cause.

11. The Court erred in admitting in evidence, over objection, descriptions, by a Government witness of certain cards, said to be special police cards, which had belonged to the defendants, Williams and Perry, and in permitting the said witness to relate the written contents of such cards where the cards themselves were not offered in evidence and where objection was made that the cards themselves are the best evidence.

12. The Court erred in refusing to poll the jury, after an overnight recess, to determine whether or not any of the jurors had read and been influenced by certain news items, published in local newspapers, which were made public during the said recess; and which news items stated, in effect, that the Dania Supply Co. had settled civil actions pending against it in which the complaining witnesses in this cause were plaintiffs,
668 by paying said complaining witnesses substantial sums of money, it appearing by such news items that the civil suits resulted from the acts of defendants to this cause, where motion was made that the jury be polled and that, if it be determined from the poll that any of the jurors had read and been influenced by such news items, the Court declare a mistrial.

13. The Court erred in denying this defendant's motion for acquittal, made after the Government had rested and renewed after both the Government and the defendants had rested.

14. The Court erred in refusing to instruct the jury that the witness, Henry Giroux, had confessed to perjury and that his testimony should therefore be received with extreme caution, such instruction having been requested in Charge numbered 2 of this defendant's requested instructions, to which refusal exception was taken.

15. The Court erred in omitting from his charge to the jury, the last paragraph of this defendant's requested instruction numbered 3, which portion of such requested instruction, in effect, charged that the verdict in cause numbered 7279-M-Cr. foreclosed, in their favor, the question of whether or not the defendants, Perry, Bombaci, Ford, Yuhas and Dania Supply Co., committed the acts alleged in the indictment as the overt acts as well as the question of whether or not they aided, abetted, encouraged, counseled, commanded, induced, procured, or in any way assisted in the commission of such acts, to which omission exception was taken.

16. The Court erred in refusing to charge that the jury must find that these defendants intended "wilfully" to do the act which was the object of the alleged conspiracy in order to convict, as requested by the defendants in their third requested Charge, the defendants having taken exception to the Court's omission of the word "wilful" in the Charge as given.

17. The Court erred in denying this defendant's mo-
669 tion, to which exception was taken, to clarify the following instruction given to the jury in answer to a question asked by one of the jurors:

"It is not necessary that each defendant be clothed with authority under color of law, but the question is: Did the de-

fendants conspire with a person or persons acting under color of law.";
where it was pointed out in this defendant's motion for clarification that he was the only defendant who was a regular police officer; that under the law it is not necessary that one acting under authority or color of authority of State law necessarily be party to the alleged conspiracy in order that others, who might utilize such authority or color of authority may be guilty, and that the instruction, as given, made it almost mandatory upon the jury to convict this defendant if they returned a verdict of guilty against any of the defendants.

Respectfully submitted,
John D. Marsh
JOHN D. MARSH
1402 Courthouse
Miami, Florida
Attorney for Charles R. Ford

RECEIPT of a copy of the above and foregoing Motion is hereby acknowledged, this the — day of April, A. D. 1949.

ASSISTANT UNITED STATES DISTRICT ATTORNEY
By Fred Botts

IN UNITED STATES DISTRICT COURT

**Motion of Joseph V. Perry for New Trial—
Filed April 27, 1949**

The defendant, JOSEPH V. PERRY, moves the Court to grant him a new trial for the following reasons:

1) The Court erred in denying this defendant's mo-
670 tion for acquittal made at the conclusion of the Government's case.

2) The Court erred in denying this defendant's motion for acquittal which was renewed at the conclusion of the entire case.

3) The verdict is contrary to the weight of the evidence.

4) The verdict is not supported by substantial evidence.

5) The defendant was substantially prejudiced and deprived of a fair trial by reason of the following circumstances:

The Government abused its discretion in refusing the joint motion of the defendants that the jury be polled separately and examined as to whether or not they had each read the newspaper articles in The Miami Herald and the Miami Daily News appearing therein after the jury had been empaneled and sworn, and whether or not they each had as a result thereof, if said articles were so read by any of them, formed an opinion

that could be passed upon as a matter of law by the Court as to any prejudice therefrom resulting as to this defendant, or any other defendant.

6) That the Court erred in failing to charge the jury as requested by the defendants, that the act alleged to be the object of the conspiracy was done by the defendant, Joseph V. Perry, in a willful manner and with specific intent to accomplish what the alleged conspiracy was supposed to have accomplished.

7) That the Court erred in failing to charge as requested by the defendant, Joseph V. Perry, that the mere presence of the said defendant was the commission of the crime alleged in the indictment, would not of itself render the said Joseph V. Perry Guilty of Committing it.

8) The defendant was substantially prejudiced and deprived of a fair trial by reason of the following circumstances:

671 The Government has failed to prove by competent evidence that the defendant committed any of the acts alleged in the indictment while acting under any color of the laws of the State of Florida.

9) The Court erred in denying the defendant's motions for a mistrial.

10) The Court erred in over-ruling and denying the motion of the defendant to dismiss the indictment herein.

Edward F. Boardman
Attorney for Defendant,
JOSEPH V. PERRY.

IN UNITED STATES DISTRICT COURT

Motion of Joseph V. Perry in Arrest of Judgment—Filed April 27, 1949

COMES NOW the defendant, JOSEPH V. PERRY, and moves that the verdict of guilty returned against him by a jury in this Court be arrested and no judgment and sentence be imposed thereon for the following reasons:

1) That the indictment does not state facts sufficient to constitute an offense against the United States of America.

2) Said Section 51, Title 18, United States Code (1946 Ed.) is unconstitutional because it is vague, uncertain, indefinite and insufficient, and an Indictment based thereon does not apprise a defendant of the true cause and character of the accusation he is called upon to defend, and for that a conviction or acquittal under an Indictment based on said Section would subject the defendant to substantial danger of another prosecution for the same offense.

3) That each of said counts charges no more than an assault and battery of which this Court has no jurisdiction.

4) That heretofore, to-wit, an indictment was filed against the defendants, JAY G. WILLIAMS, JOSEPH V. PERRY, JOHN S. BOMBACI, CHARLES R. FORD, ANDREW J. YUHAS and LINDSLEY LUMBER CO., a corporation, in this Court by the United States of America as plaintiff
672 in case No. 7279-M-Criminal, charging violation of Title 18 U. S. C., Sections 51 and 52 Civil Rights (1946 Ed.), and the said defendants after being arraigned and having pleaded not guilty to said indictment in said case numbered 7279-Miami-Criminal of this Court, were, on January 17, 1949 tried before jury duly empaneled and sworn to try said cause, and on January 21, 1949, a verdict of not guilty was returned by said jury as to JOSEPH V. PERRY, on Counts numbered 2, 4, 6 and 8 of the said indictment in case No. 7279-M-Criminal, and that the said jury was unable to agree to any said defendant in said case No. 7279-M-Criminal on Counts 1, 3, 5 and 7 of said indictment. A copy of said indictment and a certified copy of the verdict in said case No. 7279-M-Criminal has been identified and offered in evidence and made a part of the record of the instant case, and the same is offered as a part of this Motion in Arrest of Judgment as though the same were fully set out herein, and that said judgment and conviction still remains in full force and effect and not in the least reversed or made void.

And the said defendant, JOSEPH V. PERRY, In the instant case, is one and the same person as the defendant in this cause, as are the other individual defendants herein.

That the indictment under which this defendant, JOSEPH V. PERRY, was found not guilty contains the same offense under its general charges in the said four (4) counts in Case No. 7379-M-Criminal, that is to say, Counts numbered 2, 4, 6 and 8, and that the charge made in the said four counts of the indictment in case numbered 7279-M-Criminal is also *incouded* within the indictment in the instant case, and that the said defendant, JOSEPH V. PERRY having been found not guilty under the prior indictment in case No. 7279-M-Criminal herein, ought not to be convicted under the indictment in the instant case, nor should the said defendant, JOSEPH V. PERRY, be tried successively, and the said defendant, JOSEPH V. PERRY alleges that the evidence necessary to support this indictment herein, would have been sufficient to procure the conviction of this defendant, under the first
673 indictment. as all charges against the defendant JOSEPH V. PERRY, are based upon the same act, and

that therefore, this second prosecution by this indictment ought to be dismissed against the defendant, JOSEPH V. PERRY.

The defendant, JOSEPH V. PERRY, because of the above facts showing former jeopardy that the defendant's constitutional rights under the Fifth Amendment to the Constitution, are being violated herein, and prays that he may be dismissed and discharged from said indictment filed in the instant case.

Edward F. Boardman
Attorney for Defendant;
JOSEPH V. PERRY.

IN UNITED STATES DISTRICT COURT

Motion of John S. Bombaci in Arrest of Judgment—Filed April 28, 1949

NOW COMES JOHN S. BOMBACI in his own proper person, not being represented by Counsel in this cause, and moves that the Court arrest judgment herein and adopts as grounds of this motion the identical grounds stated in the motion for arrest of judgment of the Defendants, JOSEPH V. PERRY and CHARLES R. FORD.

John S. Bombaci
In His Own Proper Person

IN UNITED STATES DISTRICT COURT

Motion of John S. Bombaci for New Trial—Filed April 28, 1949

COMES NOW JOHN S. BOMBACI in his own proper person, not being represented by Counsel in the above cause, and files this his motion for new trial, and adopts as grounds
674 thereof, where applicable, the same grounds and reasons assigned in the motions for new trial filed herein by JOSEPH V. PERRY and CHARLES R. FORD.

John S. Bombaci
In His Own Proper Person

IN UNITED STATES DISTRICT COURT

Note Re Filing of Indictment in 7333

On May 23, 1949 a copy of the Indictment in Case No. 7333-M-Criminal, entitled United States of America versus Jay G. Williams, et al., was filed in evidence as an exhibit in this cause, said exhibit being filed in support of defendant's motions and being agreed upon to be filed in evidence by counsel for both sides.

IN UNITED STATES DISTRICT COURT

Note re Denials of Motions for New Trial and in Arrest of Judgments

On May 23, 1949 Motion for New Trial and Arrest of Judgment as to Williams, Ford, Perry, Bombaci, Yuhas and Dania Supply Company was denied by the Court orally in open court.

On May 23, 1949 Motion for Judgment of Acquittal as to Ford was denied by the Court orally in open court.

675 DISTRICT COURT OF THE UNITED STATES
SOUTHERN DISTRICT OF FLORIDA

United States

v.

JAY G. WILLIAMS

No. 7334-M-Cr. *Criminal* [1] Indictment *in* four *counts for violation of U. S. C., Title* 18 *Secs.* 51 (1946 Ed)

Judgment and Commitment of Jay G. Williams

On this 23rd day of May, 1949, came the United States Attorney, and the defendant JAY G. WILLIAMS, appearing in proper person, and attended by his counsel, A. C. Dressler, Esq.,[2] and,

The defendant having been convicted on [3] verdict of guilty of the offenses charged in the [1] Indictment in the above-entitled cause, to wit:[4]

conspired to violate the civil rights of certain citizens of the United States of America secured to them and protected by the Fourteenth Amendment of the Constitution of the United States of America and in violation of Sections 51, Title 18, United States Code. (1946 Ed.)

and the defendant having been now asked whether he has anything to say why judgment should not be pronounced against him, and no sufficient cause to the contrary being shown or appearing to the Court, IT IS BY THE COURT

ORDERED AND ADJUDGED that the defendant, having been found guilty of said offenses, is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for the period of [5]

TWO YEARS: sentence to run concurrency with the first two years of sentence imposed in case No. 7279-M-Cr.,

IT IS FURTHER ORDERED that the United States of America do have and recover of and from the defendant, Jay G. Williams, the sum of $100.00 as a fine imposed herein.

IT IS FURTHER ORDERED that the $100.00 fine imposed herein be and the same is remitted.

IT IS FURTHER ORDERED that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the same shall serve as the commitment herein.[7]

(Signed) JOHN W. HOLLAND
United States District Judge.

The Court recommends commitment to [8]

A True Copy. Certified this . . . . day of . . . . . .

(Signed) . . . . . *(By)* . . . . . .
Clerk. *Deputy Clerk.*

[1] Indictment or information. [2] Insert (*a*) "by counsel" or (*b*) "having been advised of his constitutional right to counsel and having been asked whether he desired counsel assigned by the Court, replied that he did not," whichever is applicable. [3] Insert the words "his plea of guilty," "plea of nolo contendere," or "verdict of guilty," as the case may be. [4] Name specific offense or offenses and specify counts upon which convicted. [5] Insert sentence and any provision for payment of fine and state whether sentences are to run concurrently or consecutively and, if consecutively, when each term is to begin; that is, with reference to termination of preceding term, or with respect to any other outstanding or unserved sentence. [6] Indicate any order with respect to suspension and probation. [7] Certified copy to accompany defendant to institution. [8] For use of Court wishing to recommend a particular institution.

676 DISTRICT COURT OF THE UNITED STATES
SOUTHERN DISTRICT OF FLORIDA

United States

v.

JOSEPH V. PERRY.

No. 7334-M-Cr. *Criminal:* Indictment *in* four *counts for violation of U. S. C., Title* 18 *Secs.* 51 (1946 Ed.)

Judgment and Commitment of Joseph V. Perry

On this 23rd day of May, 1949, came the United States Attorney, and the defendant JOSEPH V. PERRY, appearing in proper person, and Attended by his counsel, Robert L. Floyd,

Esq.,[2] and,

The defendant having been convicted on[3] verdict of guilty of the offenses charged in the[1] Indictment in the above-entitled cause, to wit:[4]

conspired to violate the civil rights of certain citizens of the United States of America secured to them and protected by the Fourteenth Amendment of the Constitution of the United States of America and in violation of Section 51, Title 18, United States Code. (1946 Ed).

and the defendant having been now asked whether he has anything to say why judgment should not be pronounced against him, and no sufficient cause to the contrary being shown or appearing to the Court, IT IS BY THE COURT

ORDERED AND ADJUDGED that the defendant, having been found guilty of said offenses, is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for the period of[5]

ONE YEAR and ONE DAY ON Count #1 of the Indictment; and on Counts #2, #3 & #4 of the Indictment ONE YEAR on each of Counts #2, #3 & #4 to run concurrently. Sentence on Counts #2, #3 & #4 to run consecutively with the sentence imposed on Count #1.

IT IS FURTHER ORDERED that the sentence imposed on Counts #2, #3 & #4 of the Indictment be suspended and the defendant be placed on probation with the Probation Office of the Miami Division of this Court for THREE YEARS under the conditions of probation as outlined in the Courts' order entered December 1, 1939 imposing Standing Conditions of Probation, the probation sentence to begin at the completion of the service of the sentence imposed on Count #1 of the Indictment.

IT IS FURTHER ORDERED that the United States of America do have and recover of and from the defendant, JOSEPH V. PERRY, the sum of $100.00 as a fine imposed herein.

IT IS FURTHER ORDERED that[6] the $100.00 fine imposed herein be and the same is remitted.

IT IS FURTHER ORDERED that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the same shall serve as the commitment herein.[7]

(*Signed*) JOHN W. HOLLAND
United States District Judge.

The Court recommends commitment to [8]

A True Copy. Certified this .... day of .....

(Signed) ..... *(By)* .....

Clerk. *Deputy Clerk.*

[1] Indictment or information. [2] Insert (*a*) "by counsel" or (*b*) "having been advised of his constitutional right to counsel and having been asked whether he desired counsel assigned by the Court, replied that he did not," whichever is applicable. [3] Insert the words "his plea of guilty," "plea of nolo contendere," or "verdict of guilty," as the case may be. [4] Name specific offense or offenses and specify counts upon which convicted. [5] Insert sentence and any provision for payment of fine and state whether sentences are to run concurrently or consecutively and, if consecutively, when each term is to begin; that is, with reference to termination of preceding term, or with respect to any other outstanding or unserved sentence. [6] Indicate any order with respect to suspension and probation. [7] Certified copy to accompany defendant to institution. [8] For use of Court wishing to recommend a particular institution.

677 DISTRICT COURT OF THE UNITED STATES
SOUTHERN DISTRICT OF FLORIDA

United States

v.

JOHN S. BOMBACI

No. 7334-M-Cr. *Criminal* [1] Indictment *in* Four *counts for violation of U. S. C., Title* 18 *Secs.* 51 (1946 Ed.)

Judgment and Commitment of John S. Bombaci

On this 23rd day of May, 1949, came the United States Attorney, and the defendant John S. Bombaci, appearing in proper person, and being represented by himself as counsel, [2] and,

The defendant having been convicted on [3] verdict of guilty of the offenses charged in the [1] Indictment in the above-entitled cause, to wit: [4]

conspired to violate the civil rights of certain citizens of the United States of America secured to them and protected by the Fourteenth Amendment of the Constitution of the United States of America and in violation of Section 51, Title 18, United States Code, (1946 Ed.).

and the defendant having been now asked whether he has anything to say why judgment should not be pronounced against him, and no sufficient cause to the contrary being shown or appearing to the Court, IT IS BY THE COURT

ORDERED AND ADJUDGED that the defendant, having been found guilty of said offenses, is hereby committed to the cus-

tody of the Attorney General or his authorized representative for imprisonment for the period of [5]

ONE YEAR and ONE DAY on Count #1 of the Indictment; and on Counts #2, #3 & #4 of the Indictment ONE YEAR on each of Counts #2, #3 & #4 to run concurrently. Sentence on Counts #2, #3 & #4 to run consecutively with the sentence imposed on Count #1.

IT IS FURTHFR ORDERED that the sentence imposed on Counts #2, #3 & #4 of the Indictment be suspended and the defendant be placed on probation with the Probation Office of the Miami Division of this court for THREE YEARS under the conditions of probation as outlined in the Courts' order entered December 1, 1939 imposing Standing Conditions of Probation, the probation sentence to begin at the completion of the service of the sentence imposed on Count #1 of the Indictment.

IT IS FURTHER ORDERED that the United States of America do have and recover of and from the defendant, John S. Bombaci, the sum of $100.00 as a fine imposed herein.

IT IS FURTHER ORDERED that [6] the $100.00 fine imposed herein be and the same is remitted.

IT IS FURTHER ORDERED that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the same shall serve as the commitment herein.[7]

(*Signed*) JOHN W. HOLLAND
United States District Judge.

The Court recommends commitment to [8]

A True Copy. Certified this ..... day of .....

(*Signed*) ..... (*By*) .....
Clerk. *Deputy Clerk.*

[1] Indictment or information. [2] Insert (*a*) "by counsel" or (*b*) "having been advised of his constitutional right to counsel and having been asked whether he desired counsel assigned by the Court, replied that he did not," whichever is applicable. [3] Insert the words "his plea of guilty," "plea of nolo contendere," or "verdict of guilty," as the case may be. [4] Name specific offense or offenses and specify counts upon which convicted. [5] Insert sentence and any provision for payment of fine and state whether sentences are to run concurrently or consecutively and, if consecutively, when each term is to begin; that is, with reference to termination of preceding term or with respect to any other outstanding or unserved sentence. [6] Indicate any order with respect to suspension and probation. [7] Certified copy to accompany defendant to institution. [8] For use of Court wishing to recommend a particular institution.

678 DISTRICT COURT OF THE UNITED STATES
SOUTHERN DISTRICT OF FLORIDA

United States

v.

CHARLES R. FORD.

No. 7334-M-Cr. *Criminal* [1] Indictment *in* four *counts for violation of U. S. C., Title* 18 *Secs.* 51 (1946 Ed.)

Judgment and Commitment of Charles R. Ford

On this 23rd day of May, 1949, came the United States Attorney, and the defendant Charles R. Ford, appearing in proper person, and attended by his counsel, John D. Marsh, Esq.,[2] and,

The defendant having been convicted on [3] verdict of guilty of the offenses charged in the [1] Indictment in the above-entitled cause, to wit:[4]

conspired to violate the civil rights of certain citizens of the United States of America secured to them and protected by the Fourteenth Amendment of the Constitution of the United States of America and in violation of Section 51, Title 18, United States Code. (1946 Ed).

and the defendant having been now asked whether he has anything to say why judgment should not be pronounced against him, and no sufficient cause to the contrary being shown or appearing to the Court, IT IS BY THE COURT

ORDERED AND ADJUDGED that the defendant, having been found guilty of said offenses, is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for the period of [5]

ONE YEAR and ONE DAY on Count #1 of the Indictment; and on Counts #2, #3 & #4 of the Indictment ONE YEAR on each of Counts #2, #3 & #4 to run concurrently. Sentence on Counts #2, #3 & #4 to run consecutively with the sentence imposed on Count #1.

IT IS FURTHER ORDERED that the sentence imposed on Counts #2, #3 & #4 of the Indictment be suspended and the defendant be placed on probation with the Probation Office of the Miami Division of this court for THREE YEARS under the conditions of probation as outlined in the Court's order entered December 1, 1939 imposing Standing Conditions of Probation, the probation sentence to begin at the completion of the service of the sentence imposed on Count #1 of the Indictment.

IT IS FURTHER ORDERED that the United States of America do have and recover of and from the defendant, Charles R. Ford, the sum of $100.00 as a fine imposed herein.

IT IS FURTHER ORDERED that [6] the $100.00 fine imposed herein be and the same is remitted.

IT IS FURTHER ORDERED that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the same shall serve as the commitment herein.[7]

(*Signed*) JOHN W. HOLLAND
United States District Judge.

The Court recommends commitment to [8]

A True Copy. Certified this ..... day of .....

(*Signed*) ..... (*By*) .....
Clerk. *Deputy Clerk.*

[1] Indictment or information. [2] Insert (*a*) "by counsel" or (*b*) "having been advised of his constitutional right to counsel and having been asked whether he desired counsel assigned by the Court, replied that he did not," whichever is applicable. [3] Insert the words "his plea of guilty," "plea of nolo contendere," or "verdict of guilty," as the case may be. [4] Name specific offense or offenses and specify counts upon which convicted. [5] Insert sentence and any provision for payment of fine and state whether sentences are to run concurrently or consecutively and, if consecutively, when each term is to begin; that is, with reference to termination of preceding term, or with respect to any other outstanding or unserved sentence. [6] Indicate any order with respect to suspension and probation. [7] Certified copy to accompany defendant to institution. [8] For use of Court wishing to recommend a particular institution.

679 DISTRICT COURT OF THE UNITED STATES
SOUTHERN DISTRICT OF FLORIDA

United States

v.

ANDREW J. YUHAS

No. 7334-M-Cr. *Criminal* [1] Indictment *in* four *counts for violation of U. S. C., Title* 18 *Secs.* 51 (1946 Ed.)

Judgment and Commitment of Andrew J. Yuhas

On this 23rd day of May, 1949, came the United States Attorney, and the defendant Andrew J. Yuhas, appearing in proper person, and attended by his counsel Ernest E. Roberts, Esq., and Edwin E. Strickland,[2] and,

The defendant having been convicted on [3] verdict of guilty of the offenses charged in the [1] Indictment in the above-entitled cause, to wit:[4]

conspired to violate the civil rights of certain citizens of the United States of America secured to them and protected by the Fourteenth Amendment of the Constitution of the United States of America and in violation of Section 51, Title 18, United States Code, (1946 Ed),

and the defendant having been now asked whether he has anything to say why judgment should not be pronounced against him, and no sufficient cause to the contrary being shown or appearing to the Court, IT IS BY THE COURT

ORDERED AND ADJUDGED that the defendant, having been found guilty of said offenses, is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for the period of [5]

ONE YEAR and ONE DAY on Count #1 of the Indictment; and on Counts #2, #3 & #4 of the Indictment ONE YEAR on each of Counts #2, #3 & #4 to run concurrently, Sentence on Counts #2, #3 & #4 to run concurrently with the sentence imposed on Count #1.

IT IS FURTHER ORDERED that the confinement sentences be suspended and the defendant be placed on probation with the Probation Office of this Court for THREE YEARS under the conditions of probations as outlined in the Courts' order entered December 1, 1939 imposing Standing Conditions of Probation.

IT IS FURTHER ORDERED that the United States of America do have and recover of and from the defendant, Andrew J. Yuhas, the sum of $100.00 as a fine imposed herein.

IT IS FURTHER ORDERED that the $100.00 fine imposed herein be and the same is remitted.

IT IS FURTHER ORDERED that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the same shall serve as the commitment herein.[7]

(*Signed*) JOHN W. HOLLAND
United States District Judge.

The Court recommends commitment to [8]

A True Copy. Certified this day of

(*Signed*) (*By*)
Clerk. *Deputy Clerk.*

[1] Indictment or information. [2] Insert (*a*) "by counsel" or (*b*) "having been advised of his constitutional right to counsel and having been asked whether he desired counsel assigned by the Court, replied that he did not," whichever is applicable. [3] Insert the words "his plea of guilty," "plea of nolo contendere," or "verdict of guilty," as the case may be. [4] Name specific offense or offenses and specify counts upon which convicted. [5] Insert sentence and any provision for payment of fine and state whether

sentences are to run concurrently or consecutively and, if consecutively, when each term is to begin; that is, with reference to termination of preceding term, or with respect to any other outstanding or unserved sentence. [6] Indicate any order with respect to suspension and probation. [7] Certified copy to accompany defendant to institution. [8] For use of Court wishing to recommend a particular institution.

680 DISTRICT COURT OF THE UNITED STATES
SOUTHERN DISTRICT OF FLORIDA

United States

v.

DANIA SUPPLY CO., a Florida corporation doing business as Lindsley Lumber Co.

No. 7334-M-Cr. *Criminal* [1] Indictment *in* four *counts for violation of U. S. C., Title* 18 *Secs.* 51 (1946 Ed).

Judgment as to Dania Supply Co.

On this 23rd day of May, 1949, came the United States Attorney, and the defendant Dania Supply Co., a Florida corporation appearing in proper person, and by Mr. A. R. Lindsley, Chairman of the Board of Directors, and attended by its counsel Ernest E. Roberts, Esq., and Edwin E. Strickland, Esq.,[2] and,

The defendant having been convicted on [3] verdict of guilty of the offenses charged in the [1] Indictment in the above-entitled cause, to wit:[4]

conspired to violate the civil rights of certain citizens of the United States of America secured to them and protected by the Fourteenth Amendment of the Constitution of the United States of America and in violation of Section 51, Title 18, United States Code, (1946 Ed),

and the defendant having been now asked whether it has anything to say why judgment should not be pronounced against it, and no sufficient cause to the contrary being shown or appearing to the Court, IT IS BY THE COURT

ORDERED AND ADJUDGED that the defendant, having been found guilty of said offenses,

IT IS ORDERED that the United States of America do have and recover from the defendant, DANIA SUPPLY CO., a Florida corporation doing business as Lindsley Lumber Co., the sum of $1000.00 on each Count #1, #2, #3 & #4 of the Indictment, totalling the sum of $4000.00;

IT IS FURTHER ORDERED that the defendant be and is allowed ten days pending filing of appeal in this case and if not per-

fected within the ten days this judgment to become effective and to be executed.

IT IS FURTHER ORDERED that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the same shall serve as the commitment herein.[7]

(*Signed*) JOHN W. HOLLAND
United States District Judge.

The Court recommends commitment to [8]

A True Copy. Certified this .... day of .....

(*Signed*) ..... (*By*) .....
Clerk. *Deputy Clerk.*

[1] Indictment or information. [2] Insert (*a*) "by counsel" or (*b*) "having been advised of his constitutional right to counsel and having been asked whether he desired counsel assigned by the Court, replied that he did not," whichever is applicable. [3] Insert the words "his plea of guilty," "plea of nolo contendere," or "verdict of guilty," as the case may be. [4] Name specific offense or offenses and specify counts upon which convicted. [5] Insert sentence and any provision for payment of fine and state whether sentences are to run concurrently or consecutively and, if consecutively, when each term is to begin; that is, with reference to termination of preceding term, or with respect to any other outstanding or unserved sentence. [6] Indicate any order with respect to suspension and probation. [7] Certified copy to accompany defendant to institution. [8] For use of Court wishing to recommend a particular institution.

681 IN UNITED STATES DISTRICT COURT

Note. Re Bail

On May 23, 1949 defendants Williams, Perry, Bombaci and Ford moved the Court orally for bail pending appeal.

On May 23, 1949 the Court granted oral motions for bail pending appeal as to Williams, Perry, Bombaci and Ford, setting bail bond at $1,000.00 each.

IN UNITED STATES DISTRICT COURT

Order Appointing Counsel

On May 23, 1949 the Court appointed, in open Court, John D. Marsh and A. C. Dressler as counsel for defendant, John S. Bombaci, pending appeal.

IN UNITED STATES DISTRICT COURT

**Notice of Appeal of Jay G. Williams—
Filed May 23, 1949**

Name and address of appellant: Jay G. Williams, Confined in the County Jail as a Federal prisoner at Punta Gorda, Florida.

Name and address of appellant's attorneys: Bart A. Riley & A. C. Dressler, 1030 Seybold Building, Miami, Florida.

Offense: Violation Title 18 U. S. C. Section 51 (1946 Ed.)

Concise statement of judgment or order, giving date, and any sentence: Judgment and Commitment entered May 23, 1949. Sentenced to serve TWO YEARS; sentence to run concurrently with the first two years of the sentence imposed in case No. 7279-M-Cr., and pay a fine to the United States of America in the sum of $100.00. It is Ordered that the $100.00 fine be and same is remitted.

Name of institution where now confined, if not on bail: Confined in the County Jail as a Federal prisoner at Punta Gorda, Florida.

I, the above-named appellant, hereby appeal to the United States Circuit Court of Appeals for the Fifth Circuit from the above-stated judgment.

DATED at Miami, Florida, this 23rd day of May, 1949.

Jay G. Williams
Appellant.

682 On May 23, 1949 the Court Ordered that supersedeas bond on appeal in the sum of $1,000.00 as to Jay G. Williams be allowed.

IN UNITED STATES DISTRICT COURT

Notice of Appeal of Charles R. Ford—Filed May 23, 1949

NAME AND ADDRESS OF APPELLANT: Charles R. Ford, 2500 South Dixie Highway, Miami, Florida.

NAME AND ADDRESS OF APPELLANT'S ATTORNEY: John D. Marsh, Esq. 1402 Dade County Court House, Miami 32, Florida.

OFFENSE: Violation Title 18 U. S. C. Section 51 (1946 Ed.)

Concise statement of judgment or order, giving date, and any sentence:

Adjudged guilty on four counts, and sentenced on May 23, 1949, to serve one year and one day imprisonment on Count One, one year imprisonment for each of Counts Two, Three and Four, sentence on Counts Two, Three and Four to run concurrently but to run consecutively to the sentence imposed as to Count One, the sentence on Counts Two, Three and Four to be suspended and the defendant placed on probation for three years, further ordered that the defendant pay a fine of

ONE HUNDRED ($100.00) DOLLARS, which fine was remitted.

The appellant, CHARLES R. FORD, appeals to the United States Circuit Court of Appeals for the Fifth Circuit from the above-stated judgment.

Dated at Miami, Florida, this 23rd day of May, A. D. 1949.

John D. Marsh
John D. Marsh
Attorney for Appellant

On May 23, 1949 the Court ordered that appeal bond in the sum of $1,000.00 be allowed as to Charles R. Ford.

On May 23, 1949 defendant, Jay G. Williams' filed Supersedeas Bond.

683 IN UNITED STATES DISTRICT COURT

Notice of Appeal of John S. Bombaci—Filed May 31, 1949

Name and address of appellant: John S. Bombaci, 2797 Northwest 21st Street, Miami, Florida.

Name and address of appellant's attorneys: John D. Marsh, c/o City Attorney's Office, Court House, Miami, Florida; and A. C. Dressler, 1030 Seybold Building, Miami, Florida.

Offense: Violation Title 18 U. S. C. Section 51 (1946 Ed.)

Concise statement of Judgment or order, giving date, and any sentence: Adjudged guilty on four counts, and sentenced on May 23, 1949, to serve one year and one day imprisonment on Count One, one year imprisonment for each of Counts two, three and four, sentence on Counts two, three and four to run concurrently but to run consecutively to the sentence imposed as to Count #1, the sentence on Cts. #2, #3 and #4 to be suspended and the defendant placed on probation for three years, further ordered that the defendant pay a fine of ONE HUNDRED ($100.00) DOLLARS, which fine was remitted.

Name of institution where now confined, if not on bail: Released on temporary bail

I, the above-named appellant, hereby appeal to the United States Circuit Court of Appeals for the Fifth Circuit from the above-stated judgment.

DATED at Miami, Florida, this 28th day of May, 1949.

John S. Bombaci
Appellant.

On May 31, 1949 Insolvency Affidavit as to defendant, Jay G. Williams, was filed.

On May 31, 1949 Insolvency Affidavit as to defendant, John S. Bombaci, was filed.

684 IN UNITED STATES DISTRICT COURT

Notice of Appeal of Joseph V. Perry—Filed June 3, 1949

Name and address of appellant: Joseph V. Perry, 918 S. W. 3rd Avenue, Miami, Florida.

Name and address of Appellant's attorneys: Robert L. Floyd and Edward F. Boardman, 607 Biscayne Building, Miami, Fla.

Offense: Violation Title 18, U. S. C. Section 51 (1946 Ed.)

Concise statement of judgment or order, giving date, and any sentence: May 23, 1949—guilty

Count 1	1 year & 1 day
Counts 2, 3 & 4	1 year on each count to run concurrently with each other but consecutively to count 1. Sentence on counts 2, 3 & 4 suspended and defendant placed on probation for 3 years.

$100.00 fine—remitted

I, the above-named appellant, hereby appeal to the United States Circuit Court of Appeals for the Fifth Circuit from the above stated judgment.

Dated at Miami, Florida, this 23rd day of May, 1949.

Joseph V. Perry
Appellant

On June 3, 1949 Supersedeas Bond was filed as to defendant, Joseph V. Perry.

On June 6, 1949, Supersedeas Bond was filed as to defendant, John S. Bombaci.

On June 6, 1949 Supersedeas Bond was filed as to defendant, Charles R. Ford.

On June 13, 1949 Motion to Extend Time for Filing Record on Appeal was filed.

685 On June 13, 1949 Insolvency Affidavit as to defendant, Charles R. Ford, was filed.

On June 15, 1949 Motion to Extend Time for Filing Record on Appeal was filed as to defendant, Charles R. Ford.

On June 16, 1949 Insolvency Affidavit as to defendant, Joseph V. Perry, was filed.

IN UNITED STATES DISTRICT COURT

Order Permitting Appeals in forma pauperis—June 17, 1949

This cause coming on to be heard on the motions and affidavits of the defendants, JAY G. WILLIAMS, JOSEPH V. PERRY, JOHN S. BOMBACI, and CHARLES R. FORD, in the above entitled cause, on their motions and affidavits tendered therewith, to allow the appeal heretofore taken by said defendants to proceed in forma pauperis; and after due notice to the Government of the presentation of this application to the Court, it is

ORDERED that the appeal of the defendants, JAY G. WILLIAMS, JOSEPH V. PERRY, JOHN S. BOMBACI, and CHARLES R. FORD, be allowed to proceed in forma pauperis in accordance with the Statute, and the official court reporter who took the shorthand notes of said trial proceedings shall transcribe five (5) copies of the transcript of the trial proceedings, including the charges given by the Court, and the Clerk of this court transmit three (3) copies of the transcript herein on appeal to the United States Circuit Court of Appeals at New Orleans, Louisiana, together with such original exhibits herein as may be designated by the parties hereto.

DATED at Miami, Florida, this 17th day of June, A. D. 1949.

JOHN W. HOLLAND
DISTRICT JUDGE

686 IN UNITED STATES DISTRICT COURT

Order Extending Time for filing Record and Appeal—June 17, 1949

This cause coming on to be heard on the motion to extend time for filing record on appeal by the defendants, Jay G. Williams, Joseph V. Perry, John S. Bombaci, and Charles R. Ford, on proper notice given to the Government, and the Court being advised in the premises,

IT IS ORDERED that the time for filing the record on appeal and docketing said action in the United States Circuit Court of Appeals in and for the Fifth Circuit, be extended to, and to include the 10th day of August 1949, which is a period of time not more than ninety (90) days from the date of the filing of the notice of appeal.

DATED at Miami, Florida, this 17th day of June, A. D. 1949.

JOHN W. HOLLAND
DISTRICT JUDGE

IN UNITED STATES DISTRICT COURT

Designation of Record on Appeal—Filed July 12, 1949

The appellants, Jay G. Williams, Joseph V. Perry, John S. Bombaci, and Charles R. Ford, designate the following portions of the record, proceedings and evidence, to be contained in the record on appeal in this action:

1. Copy in full indictment filed February 25th, 1949, together with the endorsement thereon of a True Bill by
687 the foreman of the Grand Jury.

2. Recite the arraignment and entry of pleas of "Not Guilty" on March 25th, 1949, by Charles R. Ford, John S. Bombaci, Andrew J. Yuhas, Joseph V. Perry, and Dania Supply Company.

3. Recite the docket entry of March 25th, 1949, that defendants were allowed until March 31st, 1949, in which to file any motions, and setting the date of hearing on such motions.

4. Recite the filing on March 31st, 1949, and copy in full motion to dismiss indictment and for bill of particulars filed by Joseph V. Perry.

5. Copy in full motion to dismiss filed on March 31st, 1949, by Jay G. Williams.

6. Copy in full motion to compel Government to elect as to pending indictments, filed on March 31st, 1949 by Jay G. Williams.

7. Copy in full motion to strike, filed March 31st, 1949 by by Charles R. Ford.

8. Copy in full motion to dismiss indictment, filed March 31st, 1949, by Charles R. Ford.

9. Copy in full motion filed on March 31st, 1949, to compel election of indictments, filed by Charles R. Ford.

10. Copy in full order entered April 5th, 1949, denying said motions and compelling Government to elect as to certain prosecutions, as recorded in Minute Book 35, Page 643.

11. Copy in full order entered April 5th, 1949, correcting Paragraph 3 of order, dated April 4th, 1949, as shown in Minute Book 35, Page 646.

12. Recite the filing on April 7th, 1949, of election by the Government to proceed to trial on Case numbered 7334-M-Criminal.

13. Copy in full motion filed April 14th, 1949 for leave to amend motion to dismiss indictment.

14. Copy in full order, entered April 15th, 1949, denying motion to amend motion to dismiss, as appears by docket entry and in Minute Book 35, Page 706.

15. Recite the arraignment on April 18th, 1949, and
688 entry of plea of "Not Guilty", as to Jay G. Williams.

16. Recite the trial by jury on April 18th, 1949, and the resumption of trial on April 18th, 1949, and that trial again was resumed on April 20th, 1949. Recite the resumption of said trial on April 21st and April 22nd, 1949.

17. Recite the filing and copy in full the motion of Charles R. Ford for judgment of acquittal on April 21st, 1949.

18. Copy in full motion filed April 21st, 1949, of Jay G. Williams for judgment of acquittal.

19. Copy in full all the proceedings and evidence at the trial, with all motions, rulings on motions, and all charges given by the Court, all exceptions thereto, and all the proceedings in the trial court.

20. Copy in full the third requested jury instruction of Charles R. Ford, noting thereon the endorsement of the Court given with editions, and further noting where the pencilled brackets are inserted by the Court in said instruction.

21. Copy in full the third requested jury instruction submitted by all of the defendants, noting thereon the endorsement of the Court, given with editions, and further noting where the pencilled brackets are inserted by the Court in said instruction.

22. Copy in full motion filed April 22nd, 1949, for the giving of amended instructions by the defendant, Charles R. Ford.

23. Copy in full verdict of the jury, entered April 22nd, 1949, of "Guilty" as to each defendant.

24. Copy in full motion filed April 27th, 1949, in arrest of judgment of Jay G. Williams.

25. Copy in full motion filed April 27th, 1949, for a new trial by Jay G. Williams.

26. Copy in full motion filed April 27th, 1949, for arrest of judgment by Charles R. Ford.

689 27. Copy in full renewal of motion, filed April 27th, 1949, of Charles R. Ford, for judgment of acquittal.

28. Copy in full motion for new trial filed April 27th, 1949, of Charles R. Ford.

29. Copy in full motion for new trial filed April 27th, 1949, by Joseph V. Perry.

30. Copy in full motion in arrest of judgment, filed April 27th, 1949, by Joseph V. Perry.

31. Copy in full motion filed April 28th, 1949, for arrest of judgment and for new trial by John S. Bombaci.

32. Recite the filing, as evidence, on May 23rd, 1949, and include the same in the original exhibits to be sent to the Court of Appeals, perjury indictment in Case numbered 7333-M-Criminal, as shown by said docket entry to be filed in support of said motions, filed herein; and also by stipulation in open

court, as shown by the record. (Transcript of Testimony 288-289).

33. Recite the entry on March 23rd, 1949, of docket entry that motions for new trial and arrest of judgment were denied as to Williams, Ford, Perry, Bombaci, Yuhas and Dania Supply Company, orally in open court.

34. Recite the entry on May 23rd, 1949, of docket entry that motion for judemnt of acquittal, as to appellant Ford, was denied orally in open court.

35. Copy in full judgment of commitment filed May 23rd, 1949, as to Jay G. Williams.

36. Copy in full judgment of commitment filed May 23rd, 1949, as to Joseph V. Perry.

37. Copy in full judgment of commitment filed May 23rd, 1949, as to John S. Bombaci.

38. Copy in full judgment of commitment filed May 23rd, 1949, as to Charles R. Ford.

39. Copy in full judgment of commitment filed May 690 23rd, 1949, as to Andrew J. Yuhas.

40. Copy in full judgment of commitment filed May 23rd, 1949, as to Dania Supply Company, a Florida corporation, doing business as Lindsley Lumber Co.

41. Recite the docket entry of May 23rd, 1949, of oral motions by Williams, Perry, Bombaci, and Ford, for bail pending appeal.

42. Recite the entry on May 23rd, 1949, of docket entry showing oral order granting motion of Williams, Perry, Bombaci, and Ford, and setting bail bond at $1,000.00 each pending appeal.

43. Recite the entry on May 23rd, 1949, of oral order appointing John D. Marsh and A. C. Dressler, as counsel for defendant, John S. Bombaci, pending appeal.

44. Copy in full notice of appeal filed May 23rd, 1949, by Jay G. Williams.

45. Recite docket entry on May 23rd, 1949, of order allowing supersedeas bond on Appeal in the sum of $1,000.00 as to Jay G. Williams.

46. Copy in full notice of appeal filed May 23rd, 1949, by Charles R. Ford.

47. Recite docket entry of May 23rd, 1949, of order fixing appeal bond of Charles R. Ford in the sum of $1,000.00.

48. Recite docket entry of May 23rd, 1949, of Supersedeas Bond being filed by Jay G. Williams.

49. Copy in full notice of appeal filed May 31st, 1949, by John S. Bombaci.

50. Recite the filing on May 31st, 1949, of insolvency affidavit as to Jay G. Williams.

51. Recite the filing on May 31st, 1949, of insolvency affidavit as to John S. Bombaci.

52. Copy in full notice of appeal filed June 3rd, 1949, by Joseph V. Perry.

53. Recite the filing on June 3rd, 1949, of Supersedeas Bond, as to Joseph V. Perry.

54. Recite the filing on June 6th, 1949, of Supersedeas Bond, as to John S. Bombaci.

691 55. Recite the filing on June 6th, 1949, of Supersedeas Bond as to Charles R. Ford.

56. Recite the filing on June 13th, 1949, of motion to extend time to file the record on appeal.

57. Recite the filing on June 13th, 1949, of insolvency affidavit of Charles R. Ford.

58. Recite the filing on June 15th, 1949, of motion to extend time for filing record on appeal as to Charles R. Ford.

59. Recite the filing on June 16th, 1949, of insolvency affidavit of Joseph V. Perry.

60. Copy in full order entered June 17th, 1949, permitting appeal in forma pauperis of all defendants as shown in Minute Book 36, Page 35.

61. Copy in full order, entered June 17th, 1949, extending time for filing record on appeal to August 10th, 1949, as shown in Minute Book 36, Page 33.

62. Transmit all exhibits in their original form to the Court of Appeals.

63. Recite the filing and copy in full this designation of contents of record.

64. Copy in full any statement of points on which the appellants intend to rely.

RILEY AND DRESSLER,
Attorneys for Jay C. Williams
By S. C. Dressler
Of Counsel

ROBERT L. FLOYD AND EDWARD F. BOARDMAN, Attorneys for Joseph V. Perry
By Robert L. Floyd
Of Counsel

A. C. DRESSLER AND JOHN D. MARSH
Attorneys for John S. Bombaci
By John D. Marsh
Of Counsel

692 John D. Marsh
JOHN D. MARSH, Attorney for
Charles R. Ford.

RECEIPT of a copy of the foregoing Designation of Contents of Record is hereby acknowledged, this the 12 day of July, A. D. 1949.

Fred Botts
Assistant United States Attorney.

Statement of Points on Which Appellants Intend to Rely—Filed July 27, 1949

693 The appellants, JAY G. WILLIAMS, JOSEPH V. PERRY, JOHN S. BOMBACI, and CHARLES R. FORD, make the following statement of points on which they intend to rely in their appeal herein:

1. The District Court erred in denying the motions to dismiss the indictment filed or adopted by each of the above-named appellants.

2. The District Court erred in denying the motion to strike filed by the appellant CHARLES R. FORD, and adopted by the remaining appellants.

3. The District Court erred in denying the appellant FORD'S motion for leave to amend his motion to dismiss the indictment.

4. The District Court erred in permitting the witness, FRANK J. PURNELL, JR., to testify over objection of the appellant FORD, joined by the other appellants herein, as to events which transpired in a certain building, referred to throughout this trial as the "paint shack," on March 28, 1947, such objection being made upon the ground that anything that transpired at such place and time is res judicata, the
694 mentioned objection being reflected by page 27 of the transcript of testimony.

5. The District Court erred in denying the motion made on behalf of the appellant FORD, in which motion the other appellants herein joined, to strike the testimony of the witness PURNELL upon the ground that a competent jury had determined that the appellant FORD did not participate in the commission of the acts about which the witness testified, such motion being reflected on page 54 of the transcript of testimony.

6. The District Court erred in denying the motion made on behalf of the appellant FORD to strike the testimony of MRS. MARY PRIEST, as reflected by page 263 of the transcript of testimony.

7. The District Court erred in denying the motion made on behalf of appellant FORD for a mistrial because of the admission of testimony into evidence of the witness, MRS. MARY PRIEST, as reflected by page 263 of the transcript of testimony.

8. The District Court erred in denying the motion made on behalf of the defendant, DANIA SUPPLY CO., and joined in by these appellants, to poll the jury to determine whether or not any of the members thereof had read certain newspaper articles, made exhibits in support of such motion, pertaining to the settlement of certain civil suits then pending in which the complaining witnesses herein were plaintiffs and Dania Supply Co. was defendant, as reflected by pages 275-281 of the transcript of testimony.

9. The District Court erred in denying the motion of the defendant, DANIA SUPPLY CO., joined in by these appellants, for a mistrial, as reflected by page 279 of the transcript of testimony.

10. The District Court erred in denying the motion for a mistrial made on behalf of the appellant WILLIAMS, joined in by these other appellants, said motion being based upon the multiplicity of indictments, as reflected by pages 283-287 of the transcript of testimony.

695 11. The District Court erred in permitting the witness, TOBIAS C. MATHEWS, to testify and relate conversation between himself and the defendants-appellants WILLIAMS and PERRY in the absence of the defendant-appellant FORD, where such conversation took place subsequent to the time of the alleged conspiracy herein charged, as reflected by page 421 of the transcript of testimony.

12. The District Court erred in permitting the witness, TOBIAS C. MATHEWS, to testify, over objection made on behalf of the appellant WILLIAMS, joined in by these other appellants, to the contents of a certain police card without producing the mentioned card or offering the same in evidence, or explaining its absence, as reflected by pages 242-243 of the transcript of testimony.

13. The District Court erred in denying the renewal of the motion for a mistrial, made on behalf of the defendant, DANIA SUPPLY CO., and joined in by these appellants, as reflected by pages 434-435 of the transcript of testimony.

14. The District Court erred in denying the renewal of the motion for a mistrial, made on behalf of the appellant WILLIAMS, and joined in by these other appellants, as reflected by pages 435-436 of the transcript of testimony.

15. The District Court erred in denying the motion for judgment of acquittal made on behalf of the appellant FORD, and adopted where applicable by these other appellants.

16. The District Court erred in denying the motion for judgment of acquittal made on behalf of the appellant WILLIAMS, joined in by these other appellants.

17. The District Court erred in refusing to instruct the jury that it must find that the defendants intended wilfully to do the act which was the object of the alleged conspiracy, as set forth in the third requested charge, submitted jointly by all of the defendants, as reflected by pages 515-516 of the transcript of testimony.

696 18. The District Court erred in striking from the third requested charge of the appellant FORD, and refusing to give that portion of such instruction which reads as follows:

"The verdict of the jury which I have mentioned forecloses the question of whether or not Perry, Bombaci, Ford, Yuhas and Dania Supply Co. did do the things which I mentioned above in their favor and against the Government, and you must consider that they did not commit these acts, and you must also consider that these defendants, who I have named, did not aid, abet, encourage, counsel, command, induce, procure or in any way assist any other person to commit such an act, so, in reaching a verdict in this case, you must take into consideration the fact that neither Perry, Bombaci, Ford, Yuhas and Dania Supply Co. did commit the substantive act charged as being the object of the conspiracy charged here, and that none of them aided, abetted, encouraged, counseled, commanded, induced, procured, or in any way assisted in the commission of that act.";

as reflected by pages 504-504 of the transcript of testimony.

19. The District Court erred in denying the motion of all of the defendants for a judgment of acquittal made at the conclusion of the taking of all of the testimony and after the Government and all defendants had rested, as reflected by pages 545-548 of the transcript of testimony.

20. The District Court erred in denying the motion of the appellant FORD for clarification of an instruction given to the jury by the Court, in response to a query by one of the jurors, as reflected by pages 600-602 of the transcript of testimony.

21. The District Court erred in denying the motion of the appellant WILLIAMS for arrest of judgment.

22. The District Court erred in denying the motion of appellant WILLIAMS for a new trial.

697 23. The District Court erred in denying the motion of the appellant FORD for arrest of judgment.

24. The District Court erred in denying the renewal of motion by the appellant FORD for a judgment of acquittal.

25. The District Court erred in denying the motion of the appellant FORD for a new trial.

26. The District Court erred in denying the motion of the appellant PERRY for a new trial.

27. The District Court erred in denying the motion of appellant PERRY for arrest of judgment.

28. The District Court erred in denying the motion of the appellant BOMBACI for arrest of judgment and for a new trial.

RILEY AND DRESSLER,
Attorneys for Jay G. Williams
By A. C. Dressler
Of Counsel

A. C. DRESSLER and JOHN D. MARSH
Attorneys for John S. Bombaci
By A. C. Dressler
Of Counsel
John D. Marsh

JOHN D. MARSH, Attorney for
Charles R. Ford and Joseph V. Perry

RECEIPT of a copy of the foregoing Statement of Points on which appellants intend to rely is hereby acknowledged, this the 27th day of July, A. D. 1949.

UNITED STATES ATTORNEY
By Fred Botts By: LBE
Assistant United States Attorney

698 Clerk's Certificate to foregoing transcript omitted in printing.

699 IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

JAY G. WILLIAMS, CHARLES R. FORD, ANDREW J. YUHAS, DANIA SUPPLY COMPANY, Doing Business as Lindsley Lumber Company, JOHN S. BOMBACI and JOSEPH V. PERRY

No. 12906

versus

UNITED STATES OF AMERICA

Argument and Submission of Case—October 20, 1949

On this day this cause was called, and after argument by John D. Marsh, Esq., for Appellants, and Leo Meltzer, Esq., Special Assistant to the Attorney General, for Appellee, was submitted to the Court.

700

IN THE
UNITED STATES COURT OF APPEALS
FOT THE FIFTH CIRCUIT.

No. 12906

JAY G. WILLIAMS, CHARLES R. FORD, ANDREW J. YUHAS, DANIA SUPPLY COMPANY Doing Business as Lindsley Lumber Company, JOHN S. BOMBACI And JOSEPH V. PERRY,

Appellants,

versus

UNITED STATES OF AMERICA,

Appellee.

Appeals from the District Court of the United States for the Southern District of Florida.

Opinion—January 10, 1950.

Before HOLMES, WALLER and SIBLEY,
Circuit Judges.

SIBLEY, Circuit Judge: This appeal from a conviction and sentences to penitentiary imprisonment and fine under Criminal Code Sec. 19, 18 U.S.C.A. Sect. 51, (1926 Ed.), for conspiracy to deprive of rights secured by the Constitution
701 and laws of the United States, presents novel, interesting and important questions. Those principally argued are: Does the indictment charge a crime? Does Section 19 as here applied afford legislative due process in defining the crime? Did the charge of the court rightly present the essentials of the crime in refusing to charge that "wilfulness" was an essential? Was a former acquittal of substantive offenses involving the same tranactions an adjudication that the acts there charged were not done or counselled, aided or abetted by appellants? Was there error in refusing a mistrial because of newspaper publications during the trial? Was due process denied by the institution of an oppressive prosecution for perjury in the former trial, which intimidated appellants from testifying in this trial? Motions for acquittal were also made by each appellant and overruled.

Very briefly stated the main facts and the course of the prosecution were these: The corporate appellant, Dania Supply Company, doing a lumber business, thought that thefts of lumber were being committed by unknown persons, and in the spring of 1947 it employed the appellant Williams, who headed a detective agency, to work on the case. Williams had working with him the appellants Bombaci and Perry, and also one Giroux, whom he placed on Dania Supply Company's payroll as its employee in the lumber yards to spy on other employees. Yuhas, an office employee of Dania Supply Company, though not an officer, was present during beatings and abuses testified about. Appellant Ford was and is a policeman of the City of Miami, Florida, and was at the request of the County
702 Solicitor for an officer, directed by the Chief of Police to assist in the investigation. Ford was present at some of the beatings, but neither he, nor Yuhas nor Perry did any violence, and according to some of the witnesses for the prosecution remonstrated against it. He did at some time during the proceedings arrest the persons beaten and did take them all except one to the jail and "book" them, and they were kept in jail from Friday night till Monday afternoon, when they were released on bond. It does not appear whether they were ever prosecuted. Since the arrests apparently were based on written confessions extored from them and repudiated on their release, we assume there was no prosecution. Williams was the head and front of the misconduct, his associates calling him "Chief." He directed what was done and he and Bombaci delivered the blows. Four employees of the corporation were, one by one over a period of three days, brought, not under arrest, into a small building on the corporation's premises, Yuhas being present, interrogated as to any theft, and each denying participation in or knowledge of any, each separately was cursed, threatened, kicked or beaten, required to face a brilliant light and questioned for hours, till in exhaustion each signed what was asked of him, and save one, each was arrested and jailed as above stated. The matter was reported to federal authorities and an indictment found in eight counts, four under Criminal Code Sec. 20, 18 U.S.C.A. Sec. 52, charging deprivation of his rights under the Fourteenth Amendment as to each of the four beaten persons, and four counts under Sec. 19, 18 U.S.C.A. Sec. 51, charging conspiracy as to each such person's rights. Giroux, the spy, pleaded guilty, turned State's evidence,
and received a suspended sentence. The corporation not
703 having been included in this indictment, another similar indictment was found, omitting Giroux and including the corporation as a defendant. This went to trial, and the

jury convicted Williams on the counts under Sec. 20, but acquitted the other defendants; and made a mistrial on the counts under Sec. 19 which charged a conspiracy. The defendants (except the corporation) had testified in their own behalf, and they were indicted for perjury. A new indictment was also found, being that now before us, which has four counts under Sec. 19, substantially like the four counts on which the mistrial occurred. On this last indictment each defendant was convicted and sentenced, none of them testifying, and Williams, Bombaci, Perry and Ford appeal.

1. The indictment in each count charges that the defendants conspired to injure, oppress, threaten and intimidate a named person in the free exercise and enjoyment of rights and privileges secured to him by the Fourteenth Amendment of the Constitution, towit, the right not to be deprived of liberty without due process of law; the right to be secure in his person while in the custody of the State of Florida; and to be immune from illegal assault and battery while in the custody of persons acting under color of the laws of Florida, by persons exercising the authority of the State of Florida; and the right to be tried and punished, if guilty, by due process of law under the laws of Florida. Ford, Williams and Perry were alleged to have, and to have conspired to use, authority under the State of Florida. Details were alleged as to intended assaults, beatings and torture to get confessions, or testimony against others, concerning thefts from Dania Supply Company.

704 The indictment follows the statute in its generalities, and is sufficient in its specifics to be a good criminal pleading, and if it fails to allege a crime it is because the statute fails validly to create such a one. The failure lies in the application of the statute to the provision of the Fourteenth Amendment, "Nor shall any State deprive any person of life, liberty or property without due process of law," because of the extreme vagueness of the quoted clause. Reference is made to the discussions of a similar question touching Sec. 20 in *Screws vs. United States*, 325 U. S. 91, wherein by a closely divided court that statute was upheld because it provided that "willful" violations only were to be crimes; and that meant that the accused, exercising the power of the State, not only deprived another of a federally secured right, but knew it was such, and wilfully flouted the Constitution and laws of the United States. This indictment does not charge these defendants with "wilfulness," nor does the statute mention it, and the judge refused to give the jury on request charges that "wilfulness" was a necessary element of the case.

2. The Congress and the federal court are themselves faced here with the provision of the Fifth Amendment that "No per-

son . . . shall be deprived of life, liberty, or property without due process of law," and it is found right in the midst of provisions in the Fifth and Sixth Amendments about federal prosecutions for crime. It is well understood that "due process" applies not only to court procedure, but also to legislation, especially in criminal matters. There are no common law federal crimes, but all are created by statute, though
705 common law words in the statute may take their intended meaning from the common law. Not only must the accusation inform the acused for what he is to be tried, but due process requires that the statute must inform the citizen in advance by a reasonably ascertainable standard what the crime shall be. A judge may not establish the standard, save by reasonable interpretation, after the deed is done, for that is in substance to give the statute life *ex post facto*, which the Constitution forbids also. All this we understood to be admitted by all the justices in the opinions in the *Screws* case. The word "wilful" in Sec. 20 was held by the majority to mean that the accused knew that the federal right existed and intentionally and purposely violated it, and his knowledge and wilfulness made him a criminal. This court, so understanding, held in *Pullen vs. United States*, 164 Fed. (2) 756, that the word wilful, or its equivalent, was indispensable in an indictment under Sec. 20.

Sec. 19 differs much from Sec. 20, though both have to do with federally secured right. Sec. 20 creates a misdemeanor offense; it speaks of color of law, and of "inhabitants of any State", and of discrimination in punishment on account of alienage or color or race. It punishes acts. Sec. 19 punishes ony conspiracy; it makes no reference to Sec. 20, or to color of law, or to State, or to race or color; it adds also a separate and independent crime, the act of two or more persons going in disguise on the highway or premises of another with the bad intent named; and the punishment is that of felony, and ineligibility to hold office. Wilfulness is not mentioned, nor is "intent" in the defining of the crime of conspiracy. It
706 does not protect "inhabitants", but only "any citizen in the free exercise or enjoyment of any right or privilege secured to him by the Constitution and laws of the United States." In the conspiracy provision, the Congress had in mind the federal rights and privileges which appertain to citizens as such and not the general rights extended to all persons by the clause of the Fourteenth Amendment. The *citizen's* rights are *specifically* stated in the Constitution and statutes, and in them may be found a standard of conduct. Such was the case in *Classic vs. United States*, 313 U. S. 299, when the right of the citizen to vote for a Congressman was involved.

Ex parte Yarbrough, 110 U. S. 651, like the *Classic* case, involved the right of a citizen to vote; the Fifteenth and not the Fourteenth Amendment was rested upon. We are of opinion that this provision of Sec. 19 was not intended to include rights under the due process clause of the Fourteenth Amendment secured not to citizens only, but to everyone. The trouble about the vagueness of the Fourteenth Amendment as a standard of individual conduct is thus escaped. By eliminating the vague clause of the Fourteenth Amendment, which is addressed to the States alone, we escape also the question about the defendant's acting under State authority, or color of State law."

707 We do not doubt the *power* of Congress to make it a crime of conspiracy to violate this clause of the Fourteenth Amendment. Under Art. 1, Sec. 8 (18), it has the power to protect by criminal sanctions any violation of federal rights, because necessary and proper to their preservation. The Fourteenth Amendment gives expressly power to enforce it by appropriate legislation. But Sec. 19 contains no reference to the Fourteenth Amendment, and we do not think the Amendment was contemplated in the provision for the protection of citizens in their rights.

But if we are wrong in this view, and the Fourteenth Amendment is contemplated by Sec. 19 as it is in Sec. 20, we are faced by the absence of the word "wiflul" to help the vagueness. It would certainly be strange that in the same Act of 1870 the Congress should punish the *consummated* deprivation of rights by such acts as are here charged only when wilfuly done, and only as a misdemeanor; but should punish as a ten year felony with deprivation of the power to hold federal office, the bare conspiring to do such a thing though not wilfully, and with nothing more in fact done.

3. This conclusion should end this case, but since it may be overruled, we will express an opinion on the other questions before us. The word "conspire" indeed has some connotation of criminality, and there was in the plan alleged abundant criminality under the State law, ranging from assault and battery and false imprisonment to subornation of perjury, but we do not think the word has the force or effect of "wilfully"

* In the Classic case, at pages 331 and 332, the dissenting justices forcefully stated the necessity that a federal statute creating a crime shall define what is to be punished, and they cited some of the cases. The majority thought that the right to vote effectively for Congressman, though in a primary election which would control the final election, was so clearly a constitutional right of a citizen that the broad words of the statute were definite enough to cover that case. The negative words of the due process clause of the Fourteenth Amendment do not create or mention citizens' rights, though for some purposes they may cover and protect them. They are insufficient to define a crime.

in Sec. 20. But if it has, the court erred in not giving the requests to charge that wilful deprivation of a known
708 federal right was meant and was a necessary element of the conspiracy. The judge struck the word wilful everywhere. He did charge that a "specific intent" to deprive of the Constitutional rights alleged was necessary, which might be understood as meaning that the rights were known to be such. But the judge forestalled that understanding by charging at the request of the prosecution: "All that is required in order for a conspiracy to exist is that the defendants should have *acted in concert* and with an express or implied understanding to produce *a desired result* . . . . . No formal agreement between the parties is essential to the formation of the conspiracy, for the agreement may be deemed to have been established if there be concert of action, all the parties working together understandingly with a single purpose . . . . This does not mean that they would understand *that what they were doing would be a violation of law.* All that is necessary is that they should *understand what they were doing.* If what they thus understandingly cooperate to do is a violation of law, in this case a deprivation of Constitutional rights, then the conspiracy will have been established *even though the participants did not know that what they were doing would in fact be deemed to have been a deprivation or violation of any person's constitutional rights.*" (Emphasis added.) This charge clearly states that knowledge that constitutional rights would be violated is not necessary to the establishment of this crime, but the conspiracy would be established if the parties cooperated in a common purpose and understood what they were doing. The court's attention was called to the inconsistency of these charges, but neither was withdrawn. The contradiction
709 stood. The jury were not told that "conspire" means with wilful intent to deprive of known constitutional rights, which in the *Screws* case was held would justify making deprivation under this vague clause of the Fourteenth Amendment a crime under a general reference to rights secured by the Constitution and laws. The charge, and the refusals to charge, were erroneous, even if the indictment be sustainable.

4. As to the effect of the former acquittal of appellants, except Williams, on counts under Sec. 20 which appear to state the very same acts and transactions which the present indictment charges a conspiracy to perform, we are of opinion that there was no former jeopardy or former acquittal which would *bar a trial* of the conspiracy counts in the present indictment. A former jeopardy or an acquittal to be thus effective must be of the *same offense*, and it is well established

that a conspiracy to do an unlawful act is not the same offense as the doing of it. No overt act is even required to complete a conspiracy under Sec. 19, but the crime is completed by the agreement. If the thing conspired to be done is not done it does not prevent conviction for the conspiracy, and a jury's finding that it was not done does not adjudicate that there was no agreement to do it. *Pinkerton vs. United States*, 328 U. S. 640, 643; *United States vs. Rabinowich*, 238 U. S. 78, 85; *Burton vs. United States*, 202 U. S. 344; *Woodman vs. United States*, 30 Fed. (2) 482. But the claim is also made here, that if there is no complete bar to this prosecution there is an *adjudication of a fact issue* involved in it, to-wit that these defendants did not commit or counsel or aid or abet the beating and other mistreatment of the four persons
710 named in the counts of the indictments. Proof was offered that the transactions were the same and that the court in the former trial charged the jury that if the defendants did the thing charged, or counseled or commanded or aided and abetted the doing of them, they were severally guilty. Only Williams was found guilty, and the others not guilty. While an adjudication in a civil case is in general of no force in a criminal prosecution, and vice versa, either as a complete bar by *res judicata* or as setting some issue actually tried, 50 C. J. S. Judgments, §754(b), it is otherwise as to two criminal cases prosecuted by the same government against the same defendant or defendants, and the principles of adjudication are applied, and are not supplanted by the Constitution's provision against former jeopardy. 50 C. J. S. Judgments, §754(a), citing *Collins vs. Loisel*, 262 U. S. 426; *United States vs. Oppenheimer*, 242 U. S. 85. A question or issue determined by a prior acquittal may not be relitigated in a criminal proceeding against the same person. It has been so held where one prosecution was for the substantive offense and the other for conspiracy to commit it. *United States vs. McConnell*, 10 Fed. (2) 977; *United States vs. Myerson*, 24 Fed. (2) 855; *United States vs. Morse*, 24 Fed. (2) 1001; *United States vs. De Angelo*, 138 Fed. (2) 466. Where, as here, conspiracy was the issue in one case and aiding and abetting in the other, the two issues were thought so nearly identical as to prevent a retrial: *Sealfon vs. United States*, 332 U. S. 575. In the present case the direct evidence of conspiracy is slight, and absent as to some defendants, reliance being put on evidence that they were all present when the beatings and other things were done and did not try to stop them, but did some things to
711 help. The adjudication that only Williams did the wrong the the others did not counsel, aid or abet him in doing it, would be very helpful to these others in rebutting

the inference that there was a previous conspiracy to do it. For this evidentiary purpose the record and the charge of the court to show what was tried before, were admissible and it was error to exclude them.

5. The indictment for perjury may have discouraged these defendants from testifying again and thus embarrassed their defense, but there was no cause therein for mistrial and no want of due process. The perjury indictment was not before the jury, and so far as appears, unknown to them. Any witness may be indicted for perjury if he swears falsely. He ought to fear nothing if he swears truthfully. The risk of unjust prosecution is present when any witness testifies. We think the pendency of a perjury indictment against a defendant does not prevent his being tried on some other charge, notwithstanding his former testimony would be pertinent in the present case. Mistrial for newspaper comments does not seem to have been required.* The same thing would not probably occur again, if there should be a new trial.

The judgments appealed from are reversed, and direction given to quash the indictment.

712 WALLER, Circuit Judge concurred in the foregoing and also filed the following opinion.

WALLER, Circuit Judge, specially concurring:

In SCREWS v. U. S., 325 U. S. 91, the Court, on the subject of the lack of specificity in Section 52 of Title 18, said:

"* * * The constitutional vice in such a statute is the essential injustice to the accused of placing him on trial for an offense, the nature of which the statute does not define and hence of which it gives no warning."

In the present case, as in SPURR v. U. S., 174 U. S. 728, "The wrongful intent is the essence of the crime."

If I understand the teaching of the SCREWS case, it is that the word "willful" in the statute requires the showing of "an evil motive" in the deprivation of a federal right and that such is a constituent element of the crime, and that although one would be a criminal under the state law, he would not be such under Section 52 if his intent and purpose was unrelated to a deprivation of constitutional guaranties. It is made quite

* The comments related only to Dania Supply Company, who is not an appellant. It does not appear that any juror read them. In the charge the court twice instructed the jury to consider only the evidence in the case and nothing that they may have heard outside the court or read in the newspapers.

clear that the word "willful" in Section 52 persuaded the Court to say, in the SCREWS case, that:

"* * * We repeat that the presence of a bad purpose or evil intent alone may not be sufficient. We do say that a requirement of a specific intent to deprive a person of a federal right made definite by decision or other rule of
713 law saves the Act from any charge of unconstitutionality on the grounds of vagueness."

In the SCREWS case, as here, the disregarded federal rights were under the Fourteenth Amendment.

Section 51, Title 18, with no mention of the word "willful" or of acts "under color of law of the state" or of discrimination because of "color, or race," or alienage, or of any "inhabitant", merely says that if two or more persons conspire to injure any *citizen* in the free exercise of any right *secured* to him by the Constitution or laws of the United States they shall be fined not more than $5,000.00, imprisoned not more than ten years, and thereafter be ineligible to any office or place of honor, profit, or trust created by the Constitution or laws of the United States.

The right not to be beaten by two or more persons can hardly be said to be a right or privilege that is "secured" to "the free exercise and enjoyment" of any citizen of the United States. The terms "free exercise" and "enjoyment" connote active use or positive utilization of privileges rather than a mere passive possession thereof. It seems grossly inapt to speak of a person as "having free exercise" of the privilege of being immune from assault and battery, or as having the "free exercise and enjoyment" of the right to be tried and punished under the laws of Florida; or in freely exercising the right to be secure in his person while in the custody of the State of Florida. In short, one does not freely exercise or
714 enjoy being in the custody of the State of Florida nor being tried and punished by due process of law. The citizen does, however, freely exercise or enjoy the privilege to vote, to assemble, to worship, to speak, or, that is, such privileges as are exercised or enjoyed by him out of his own activities.

Moreover, the right of a citizen not to be beaten is a right or privilege secured to him by the State law and not by federal law. Beating, standing alone, is insufficient to call the federal Constitution, statutes, or courts into operation.[1] It is only

[1] "* * * The fact that a prisoner is assaulted, injured, or even murdered by state officials does not necessarily mean that he is deprived of any right protected or secured by the Constitution or laws of the United States." SCREWS v. U. S. supra, 325 U. S. at page 108.

when someone willfully or intentionally acts under color or pretense of law of the State, in contravention of the Fourteenth Amendment, that the right not to beaten becomes a federal right. In short, neither the beating of the victims by the four defendants in this case nor a conspiracy to beat them would have been a federal offense since the right or privilege of the victims was secured merely by state law, and it would become a federal offense only if and when the draftsman of the indictment could invoke a violated federal statute or provision of the Constitution. Furthermore, the only way a federal indictment under Section 51 can be predicated upon the violation of rights under the Fourteenth Amendment is by alleging that the defendants were acting under authority of the state, since the Fourteenth Amendment can have no application to individual action. Section 51 makes no reference to state law or authority.

715 These and other aspects of the case strongly suggest that Section 51, which deals only with rights or privileges of a citizen—as distinguished from an inhabitant—had reference only to interference with the free exercise by the citizen of exercisable rights pertaining to citizenship as distinguished from federal rights of persons or inhabitants, and that Section 51 was intended to make illegal concerted action designed to prevent citizens from participating in politics or from exercising rights that are expressly secured by federal law to *citizens*.

Section 51 is far more vague and indefinite than Section 52, and under the SCREWS case all that saved Section 52 from the abyss of invalidity was the word "willful". It is clear that Section 52 had reference to deprivation of rights of inhabitants —even though aliens—under the Fourteenth Amendment by its use of the phrase "under color of any law, statute, ordinance, regulation, or custom." Moreover, Section 52 prevents the deprivation not only of rights "secured" but "protected" by the Constitution and laws of the United States, while Section 51 does not embrace rights *protected* by the Constitution and laws. The rights or privileges embraced in Section 51 are only those which are *secured* to the citizen by the Constitution and laws of the United States. The wording of Section 51 is not in harmony with the purposes which the United States seeks in this case to have the statute accomplish.

In considering the question of necessity for the statute to prescribe that the act must be done willfully in order to avoid the charge of lack of specificity, it should be noted that
716 the word "conspire" does not always carry the connotation of willfulness. Conspiracy is a combination of two or more persons by some concerted action to accomplish some

criminal or unlawful purpose or to accomplish some purpose, not in itself criminal or unlawful, by criminal or unlawful means. PETTIBONE v. U. S., 148 U. S. 197. The conspiracy here can only be of the latter type or, that is, a conspiracy having a lawful purpose to be accomplished by unlawful or criminal means. Certainly, it was not unlawful for the defendants to agree to investigate the thieveries, but it was unlawful, under the laws of the state, to assault, beat, and kick those held in custody for investigation. The thing that was unlawful, or that was willful, was not the agreement to investigate stealing but the method utilized in making the investigation and in seeking to extort confessions. The defect in Section 51, as same must be applied to these defendants, is that it makes criminal any agreement, lawful or otherwise, which results, by design or otherwise, in injury, oppressing, etc., a citizen in the free exercise or enjoyment of a right or privilege secured by federal law. As in the SCREWS case a conscious purpose to do wrong was insufficient. Since the agreement to investigate was lawful, there must have been an intention, a willful purpose, to injure or oppress, which the word "conspire" would neither connote nor distinguish.

Suppose that A, in good faith, enters into an agreement with B and C for the doing of a lawful thing, but that B and C, without the knowledge or intention of A, do the lawful thing in an unlawful manner with resultant injury to D and E. Not only should A not be convicted of a felony, but such
717 a conspiracy could not connote willfulness to A.

In defining the crime of conspiracy to do an act which had been made criminal by federal statute the use of the word "willfully" or "unlawfully" would not be required because the required specificity would be found in the statute defining the crime. For instance, in defining a conspiracy to rob a Post Office, it would not be necessary to state "if two or more persons *willfully* conspire to rob the Post Office," for robbery of a Post Office is a federal offense already defined by statute. But should a statute provide that if two or more persons conspire to sing the Doxology during church services without providing that the singing must be done willfully or with the intent to disturb public worship, such a statute, no doubt, would be invalid. If two or more policemen, in investigating a crime, should mistakenly arrest a citizen and hold him in jail for a reasonable time pending investigation, they would be liable, under Section 51, as written, to indictment, imprisonment for ten years, a fine of $10,000, and disbarment from holding any office or position of trust unless the statute required it to be alleged and proven that their acts were willful or in violation of a definite statute.

It will be noted that the first part of Section 51 providing against injury, oppressing, threatening, or intimidating a citizen in the exercise of a federal right requires no overt act on the part of any conspirator. This is the phase of the statute involved here, and under it could not the Chief of Police of Miami, who merely aided the investigation by detailing
718 Ford, a policeman, to assist, be also found guilty? He did nothing illegal. He merely attempted to aid in apprehending criminals, as was his duty. If conspiring without willfulness and without the commission of an overt act is an offense under Section 51, that officer, who had no part in the beatings and no knowledge whatsoever of the occurrence of anything wrong, would also be guilty of a felony under the statute.

At the present time, according to the newspapers, a drive is being made by law enforcement officers of Florida, in cooperation, to prevent the dissemination to bookies of daily racing data in violation of a state statute and in detriment to the collection of the state revenue. If those who disseminate such information were to be arrested and placed in jail, and later held to have been in the exercise of their right of the freedom of the press, would not these officers attempting to enforce the law in a lawful manner be within the condemnation of Section 51?

Nothing need be added to what was said in the majority opinion about the necessity of defining a crime in order that one may know if and when he is violating the law. The purpose of this opinion is chiefly to present the view that the word "conspire" does not—as applied to the facts in the present case, at least—connote willfulness and that the rule of strict construction of criminal statutes applies with equal force against supplying connotations not justified by the language or the sense of the Act.

Our Court, speaking through this writer, has in CREWS v. U. S., 160 F. 2d 746, PULLEN v. U. S., 164 F. 2d 756,
719 and WILLIAMS v. U. S., 177 . . F. 2d 654 ., not yet officially reported, which were all cases under Section 52, followed the teaching of the Supreme Court in the SCREWS case that in the absence of the element of willfulness in the deprivation of a right under the Fourteenth Amendment there can be no ascertainable standard of guilt, and I can perceive no reason why that doctrine should not be applied with equal force to conspiracies under Section 51 based upon deprivation of the free exercise by a citizen of rights arising out of the Fourteenth Amendment, which are often vague and obscure to laymen and difficult of discernment by judges.

I do not think that Section 51 is unconstitutional in situations where the conspiracy is one having the purpose to violate a federal statute containing a definition of the elements of the offense to be accomplished. I do not think that part of the Act relative to two or more persons going in disguise on the highway with intent to prevent the citizen in the free exercise or enjoyment of his rights would be violative of the Constitution for in such instances the statute makes intent an element of the crime, but I am unable to escape the conclusion that to make Section 51 apply, regardless of intent, to an interference with rights under the Fourteenth Amendment, that sometimes cannot be determined until the end of the trial, would be as great a deprivation of constitutional rights as that sought to be punished in the present case.

720 HOLMES, Circuit Judge, dissenting:

We should not, I think, read the word *willfully* into the conspiracy statute on civil rights before the word *conspire*, as indicated in the majority opinion. The Congress did not put it there, and we should not undertake to do so by interpretation. The word was not added to the substantive offense until 1909, although the original act was approved in 1866. It was said that this addition was to make the section "less severe." 325 U. S. 100; 42 Cong. Rec., 60 Cong., 2nd Session, p. 3599.

There are several conspiracy statutes in the new Criminal Code (Sections 241, 286, 371, 372, 2271, and 2384), and only in Section 2271 do we find the word so modified, the language used being "whoever willfully and corruptly conspires," etc. Thus, apparently, there was legislative discrimination in the employment of adverbs to modify this verb. To conspire, as used in Section 51, 18 U. S. C. (Sec. 241 of the new code), means to enter into a conspiracy, as defined at common law, to do the things mentioned in said section. The word does not need to be modified, limited, or supplemented, because common-law words used in a federal statute ordinarily "take their intended meaning from the common law." Cf. *Norris v. United States*, 152 F. (2) 808, 811. Therefore, to conspire, as used in said section and applicable here, means to enter into an agreement to injure, oppress, threaten, or intimidate, any citizen in the enjoyment of any right secured to him by the Constitution or laws of the United States. The unlawful agreement, that is, the conspiracy, is the gist of the crime defined in the statute; and, in order to render the offense com-

721 plete, it is not necessary that any act should be done in furtherance of the unlawful agreement entered into between the parties. Each conspirator is criminally responsible for every substantive crime committed in furtherance of the conspiracy, whether specifically contemplated or not (97

Ala. 57, 142 U. S. 450); but an acquittal of the substantive offense ordinarily does not bar a prosecution for conspiracy.

In *Screws v. United States*, 325 U. S. 91, the court was dealing with an indictment for the substantive offense, under what is now Section 242 of the new Criminal Code, and it admittedly strained to uphold the constitutionality of the statute, because, it said, p. 100:

"We hesitate to say that when Congress sought to enforce the Fourteenth Amendment in this fashion it did a vain thing. We hesitate to conclude that for 80 years this effort of Congress, renewed several times, to protect the important rights of the individual guaranteed by the Fourteenth Amendment has been an idle gesture. Yet if the Act falls by reason of vagueness so far as due process of law is concerned, there would seem to be a similar lack of specificity when the privileges and immunities clause (Madden v. Kentucky, 309 U. S. 83) and the equal protection clause (Smith v. Texas, 311 U. S. 128; Hill v. Texas, 316 U. S. 400) of the Fourteenth Amendment are involved. Only if no construction can save the Act from this claim of unconstitutionality are we willing to reach that result. We do not reach it, for we are of the view that if Section 20 is confined more narrowly than the lower courts confined it, it can be preserved as one of the sanctions to the great rights which the Fourteenth Amendment was designed to secure."

722 There is no necessity for the conspiracy feature of this legislation, on constitutional grounds, to be more narrowly confined than is indicated by the language used in the statute. The Congress itself has made a distinction between the substantive offense and the crime of conspiracy by adding the word *willfully* as an ingredient of the substantive offense and by failing to make such addition to the essential elements composing the offense of conspiracy. The reason for the legislative distinction may be found in the differences inhering in the two offenses. One who enters into a criminal conspiracy to injure, oppress, threaten, or intimidate, any citizen in the enjoyment of a civil right does not need any legislative warning other than that of the statute itself, which is specific enough to cover any such right that is embraced in the agreement. Statutory specificity is essential to give due notice that an act has been made criminal before it is done; specificity in criminal prosecutions is required to inform the accused of the nature and cause of the accusation against him, so that he may adequately prepare his defense, and plead his acquittal or conviction on another trial for the same offense. More than this is not constitutionally required.

More particularity is sometimes required in indictments than in statutes; that is, less specificity is required in legislation, in order to warn the public to refrain from doing an interdicted act, than is necessary in an indictment in order to inform the defendant of the nature and cause of the accusation against him. For instance, ordinarily in an indictment it is sufficient to charge an offense in the words of the statute,[1] but this is not true unless the words of the statute set forth all
723 the essential elements of the offense; and the fact that the statute, read in the light of the common law, enables the court to infer the intent of the Congress, does not dispense with the necessity of alleging in the indictment all the facts necessary to bring the case within that intent. See *U. S. v. Carll*, 105 U. S. 611, in which the court said, p. 613:

"The language of the statute on which this indictment is founded includes the case of every person who, with intent to defraud, utters any forged obligation of the United States. But the offense at which it is aimed is similar to the common-law offense of uttering a forged or counterfeit bill. In this case, as in that, knowledge that the instrument is forged and counterfeited is essential to make out the crime; and an uttering, with intent to defraud, of an instrument in fact counterfeit, but supposed by the defendant to be genuine, though within the words of the statute, would not be within its meaning and object.

"This indictment, by omitting the allegation contained in the indictment in United States v. Howell (11 Wall. 432), and in all approved precedents, that the defendant knew the instrument which he uttered to be false, forged, and counterfeit, fails to charge him with any crime. The omission is of matter of substance, and not a 'defect or imperfection in matter of form only,' within the meaning of Sec. 1025 of the Revised Statutes. By the settled rules of criminal pleading, and the authorities above cited, therefore, the question of the sufficiency of the indictment must be answered in the negative."

724 The principle thus announced has been summed up as follows: "Legislation may proceed by implication, but good pleading cannot."[2] The attack in the instant case is on the legislation, not on the pleading. There is no serious question here about the validity of the indictment if the applicable legislation is constitutional. The crime charged in the

[1] Ledbetter v. United States, 170 U. S. 606, 611-612; Sutton v. United States, 157 F. (2) 661, 663.

[2] Grimsley v. United States, 50 F. (2) 511.

indictment, in substance, is that the appellants, acting under color of the laws of Florida, conspired to injure certain citizens of the United States in the free exercise and enjoyment of the rights and privileges secured to each of them by the 14th Amendment, which are particularly alleged to be the right not to be deprived of their liberty, and the right not to be subjected to punishment, without due process of law; also the right not to be compelled to testify against themselves or to be subjected to illegal coercion to testify against others. The details of the conspiracy are fully alleged, and the only real constitutional question is whether or not the act itself is invalid for vagueness or uncertainty.

It is unnecessary for me to amplify my views, owing to the elaborate discussion of kindred legislation in the *Screws* case, wherein four opinions were written but a majority of the court never concurred entirely in any one of them. An analysis of the four opinions reveals that three of the Justices dissented; two were in favor of affirming the judgment outright (although one of them voted for reversal in order to dispose of the case); and four were unwilling to hold the act unconstitutional if its scope was narrowly confined by interpretation. Thus six upheld the constitutionality of the act as construed in the opinion of Mr. Justice Douglas. Three dissented
725 outright, saying that "this shapeless and all embracing statute can serve as a dangerous instrument of political intimidation and coercion in the hands of those so inclined." Since a majority of the Supreme Court upheld the constitutionality of the statute before them in the *Screws* case, *a fortiori*, the constitutionality of Section 241 should be upheld in this case.

The conviction under review on this appeal is for conspiracy only. The courts have found it difficult to frame an accurate and complete definition of the common-law crime of conspiracy, it being suggested by eminent legal writers that perhaps it cannot be done.[3] Necessarily it is equally difficult, and perhaps impossible, to frame a statutory definition sufficiently accurate to include all agreements that are punishable as conspiracies, and at the same time to avoid including some that are not punishable as such. Let us bear in mind, however, that the law does not punish mere intention on the part of anyone. There must be an unlawful agreement or combination to accomplish, by concerted action, some criminal or unlawful purpose, or to accomplish some purpose not in itself criminal by unlawful means. In many of the states, as well as at com-

[3] Clark & Marshall's Law of Crimes, 2 Ed., p. 194; 8 Cyc. 620.

mon law, the crime of conspiracy is defined in the most general terms.[4] Such statutes are not void for vagueness or uncertainty, provided the language used is sufficient to give warning to all persons to refrain from committing the kind or class of conspiracy that is within the letter and spirit of the legislative definition. Where the intention of the Congress is clear from the language of the statute, the indictment must expressly allege every material ingredient of the offense
726 even though the statute has included some element only by implication.

Under our dual form of state and national government, the same act may be a crime against two sovereignties. Therefore, conspiring to deprive a citizen of the United States of his life or liberty without due process of law may be punishable as one crime against the United States and as another crime against the State in which the deed is done. Punishment may be inflicted by either sovereignty that has custody of the defendant. To steal property in interstate commerce may be, and generally is, a crime against both a state and the United States; the same is true as to robbery of an interstate shipment, and numerous other crimes.

Since Section 241 is sufficiently definite to warn the public to refrain from entering into conspiracies against citizens of the United States of the class defined therein; and since the indictment here is for a conspiracy of the prohibited class, and is sufficient to inform the defendants of the nature and cause of the accusation against them, and the record is otherwise free from reversible error, I dissent from the judgment of reversal.

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727 IN THE UNITED STATES COURT OF APPEALS

JAY G. WILLIAMS, CHARLES R. FORD, ANDREW J. YUHAS, DANIA SUPPLY COMPANY, Doing business as Lindsley Lumber Company, JOHN S. BOMBACI And JOSEPH V. PERRY

No. 12906

versus

UNITED STATES OF AMERICA

Judgment—Jan. 10, 1950

This cause came on to be heard on the transcript of the

[4] See Miss. Code of 1942, Vol. 2, Sec. 2056, in which one definition is as follows: "If two or more persons conspire to commit a crime, each of them shall be guilty of misdemeanor."

record from the District Court of the United States for the Southern District of Florida, and was argued by counsel;

On consideration whereof, It is now here ordered and adjudged by this Court that the judgments of the said District Court appealed from in this cause be, and the same are hereby reversed, and direction given to quash the indictment.

"Waller Circuit Judge, specially concurs."

"Holmes, Circuit Judge, dissents."

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728 Clerk's Certificate to foregoing transcript omitted in printing.

729 SUPREME COURT OF THE UNITED STATES

No. ———, October Term, 1949

UNITED STATES OF AMERICA

v.

JAY G. WILLIAMS, CHARLES R. FORD, ANDREW J. YUHAS, DANIA SUPPLY COMPANY, DOING BUSINESS AS LINDSLEY LUMBER COMPANY, JOHN S. BOMBACI and JOSEPH V. PERRY

Order Extending Time to File Petition for Writ of Certiorari

UPON CONSIDERATION of the application of counsel for petitioner(s),

IT IS ORDERED that the time for filing petition for writ of certiorari in the above-entitled cause be, and the same is hereby, extended to and including March 11th, 1950.

HUGO L. BLACK,
Associate Justice of the Supreme Court of the United States.

Dated this 8th day of February, 1950.

☆ U. S. GOVERNMENT PRINTING OFFICE, 1950. JACKET NO. 882081 MEMORANDUM PRINT ORDER NO. 84.

Supreme Court of the United States

No. 26—October Term, 1950

Order allowing certiorari

Filed October 16, 1950

The petition herein for a writ of certiorari to the United States Court of Appeals for the Fifth Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

916168—50

In the Supreme Court of the United States

OCTOBER TERM, ~~1949~~ 1950

No. ~~650~~ 26

UNITED STATES OF AMERICA, PETITIONER

v.

JAY G. WILLIAMS, CHARLES R. FORD, JOHN S. BOMBACI, AND JOSEPH V. PERRY

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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In the Supreme Court of the United States

OCTOBER TERM, ~~1949~~ 1950

No. ~~659~~ 26

UNITED STATES OF AMERICA, PETITIONER

v.

JAY G. WILLIAMS, CHARLES R. FORD, JOHN S. BOMBACI, AND JOSEPH V. PERRY

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

The Solicitor General, on behalf of the United States, prays that a writ of certiorari issue to review the judgment of the Court of Appeals for the Fifth Circuit (R. 394-395) entered in this case.

OPINIONS BELOW

The opinions in the Court of Appeals (R. 378-394) are reported at 179 F. 2d 644.

JURISDICTION

The judgment of the Court of Appeals was entered January 10, 1950 (R. 394). On February 8, 1950, by order of Mr. Justice Black, the time within which to file a petition for a writ of certiorari was extended to and including March 11, 1950 (R. 395). This petition is filed March 9, 1950. The jurisdiction of this Court is invoked

under 28 U.S.C. 1254(1). See also Rules 37(b)(2) and 45(a), F. R. Crim. P.

QUESTIONS PRESENTED

1. Whether Section 19 of the Criminal Code, which in terms protects every citizen in the exercise or enjoyment of "any right or privilege secured to him by the Constitution or laws of the United States," should be narrowly construed so as to apply only to those rights and privileges which pertain to national citizenship.

2. Whether Section 19, if construed to protect rights secured by the Fourteenth Amendment, is unconstitutional for failure to provide a reasonably ascertainable standard of guilt.

3. Whether the trial court committed reversible error in its instructions concerning the intent required under the statute.

4. Whether the trial court committed reversible error by failing to admit evidence concerning the previous acquittals of some of the respondents of substantive offenses under Section 20 of the Criminal Code.

STATUTORY AND CONSTITUTIONAL PROVISIONS INVOLVED

Section 19 of the Criminal Code, 18 U.S.C. (1946 ed.) 51 (now 18 U.S.C. (1948 rev.) 241), provided during the period involved in this case:

> If two or more persons conspire to injure, oppress, threaten, or intimidate any citizen in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, or because of his having so exercised the same, or if two

or more persons go in disguise on the highway, or on the premises of another, with intent to prevent or hinder his free exercise or enjoyment of any right or privilege so secured, they shall be fined not more than $5,000 and imprisoned not more than ten years, and shall, moreover, be thereafter ineligible to any office, or place of honor, profit, or trust created by the Constitution or laws of the United States.[1]

The Fourteenth Amendment provides:

Sec. 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Sec. 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

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[1] Section 20 of the Criminal Code, 18 U.S.C. (1946 ed.) 52. (now 18 U.S.C. (1948 rev.) 242), the companion civil rights statute creating a substantive offense, provided:

"Whoever, under color of any law, statute, ordinance, regulation, or custom, willfully subjects, or causes to be subjected, any inhabitant of any State, Territory, or District to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution and laws of the United States, or to different punishments, pains, or penalties, on account of such inhabitant being an alien, or by reason of his color, or race, than are prescribed for the punishment of citizens, shall be fined not more than $1,000, or imprisoned not more than one year, or both."

STATEMENT

On April 22, 1949, respondents and two other defendants, Andrew Yuhas and Dania Supply Company, who did not appeal, were convicted in the District Court for the Southern District of Florida on four counts of an indictment, each charging a violation of Section 19 of the Criminal Code (R. 1). In each count it was alleged that respondent Ford, a police officer of the municipality of Miami, and respondents Williams and Perry, special Miami police officers, each of whom was acting under the laws of the State of Florida and the ordinances and regulations of the municipality of Miami, together with the other defendants, conspired to injure, oppress, threaten and intimidate a different named citizen in the free exercise and enjoyment of the rights and privileges secured to him and protected by the Fourteenth Amendment, to wit: the rights and privileges not to be deprived of liberty without due process of law; to be secure in his person while in the custody of the State of Florida; not to be subjected to punishment without due process of law; to be immune, while in the custody of persons acting under color of the laws of the State of Florida, from illegal assault and battery by any person exercising the authority of the State; and to be tried by due process of law and if found guilty to be sentenced and punished in accordance with the laws of the State of Florida. It was further charged that it was the plan and purpose of the conspiracy that the defendants would arrest and detain the

citizen and would cause him to enter certain premises owned by Dania Supply Company and that they would, while the citizen was so detained, illegally strike, bruise, batter, beat, assault, and torture him in order illegally to coerce and force him to make an admission and confession of his guilt in connection with an alleged theft of company property and name and accuse other persons as participants in such thefts, and for the purpose of imposing illegal summary punishment upon him. (R. 2, 3, 5, 6.)

The sufficiency of the evidence adduced in support of these allegations, which is briefly summarized in the majority opinion below (R. 379), was not questioned below and is not in issue; accordingly, it is unnecessary to review the evidence here.

The principal grounds of the decision below, reversing respondents' convictions and quashing the indictment, are contained in the following quotations from the majority opinion:

> The indictment follows the statute in its generalities, and is sufficient in its specifics to be a good criminal pleading, and if it fails to allege a crime it is because the statute fails validly to create such a one. The failure lies in the application of the statute to the provision of the Fourteenth Amendment, "Nor shall any State deprive any person of life, liberty, or property without due process of law," because of the extreme vagueness of the quoted clause. * * * (R. 380.)

* * *

* * * It [Section 19] does not protect "inhabitants," but only "any citizen in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States." In the conspiracy provision, the Congress had in mind the federal rights and privileges which appertain to citizens as such and not the general rights extended to all persons by the clause of the Fourteenth Amendment. The citizen's rights are *specifically* stated in the Constitution and statutes, and in them may be found a standard of conduct. * * * (R. 381.)

* * *

* * * Sec. 19 contains no reference to the Fourteenth Amendment, and we do not think the Amendment was contemplated in the provision for the protection of citizens in their rights.

But if we are wrong in this view, and the Fourteenth Amendment is contemplated by Section 19, as it is in Section 20, we are faced by the absence of the word "wilful" to help the vagueness. * * * (R. 382.)

* * *

* * * The word "conspire" indeed has some connotation of criminality, and there was in the plan alleged abundant criminality under the State law, ranging from assault and battery and false imprisonment to subornation of perjury, but we do not think the word has the force or effect of "wilfully" in Section 20. But if it has, the court erred in not giving the requests to charge that wilful deprivation of a known federal right was meant and was a necessary element of the con-

spiracy. The judge struck the word wilful everywhere. He did charge that a "specific intent" to deprive of the Constitutional rights alleged was necessary, which might be understood as meaning that the rights were known to be such. But the judge forestalled that understanding by charging * * * that knowledge that constitutional rights would be violated is not necessary to the establishment of this crime, but the conspiracy would be established if the parties cooperated in a common purpose and understood what they were doing. The court's attention was called to the inconsistency of these charges, but neither was withdrawn. The contradiction stood. The jury were not told that "conspire" means with wilful intent to deprive of known constitutional rights, which in the *Screws* case was held would justify making deprivation under this vague clause of the Fourteenth Amendment a crime under a general reference to rights secured by the Constitution and laws. The charge, and the refusals to charge, were erroneous, even if the indictment be sustainable. (R. 382-383.)

Judge Waller concurred specially (R. 385) and Judge Holmes dissented (R. 390).

SPECIFICATION OF ERRORS TO BE URGED

The Court of Appeals erred:

1. In holding that Section 19 should be narrowly construed to apply only to those rights and privileges which pertain to national citizenship, and not to apply to rights secured by the Fourteenth Amendment.

2. In holding that if Section 19 is construed to apply to rights secured by the Fourteenth Amendment, it is to that extent unconstitutional under the Fifth Amendment for failure to provide a reasonably ascertainable standard of guilt.

3. In holding that the trial court committed reversible error by failing properly to instruct the jury as to the element of wilfulness and intent required under the statute.

4. In holding that the trial court committed reversible error in refusing to admit evidence concerning the previous acquittals of respondents Ford, Bombaci and Perry on an indictment charging them with substantive offenses under Section 20 of the Criminal Code.

5. In reversing respondents' convictions and directing that the indictment be quashed.

REASONS FOR GRANTING THE WRIT

The narrow construction placed on Section 19 of the Criminal Code, now 18 U.S.C. (1948 rev.) 241, by the majority below is inconsistent with the interpretation given by the majority of this Court, in *Screws* v. *United States,* 325 U.S. 91, to Section 20 of the Criminal Code, now 18 U.S.C. (1948 rev.) 242. As Mr. Justice Rutledge observed in his separate opinion in that case, "Sections 19 and 20 are twin sections in all respects that concern any question of vagueness in defining the crimes. * * * Section 19 strikes at conspiracies, § 20 at substantive offenses. The former protects 'citizens,' the latter 'inhabitants.' There

are, however, no differences in the basic rights guarded." (325 U.S. at 119.) The importance of the decision below in the administration of the civil rights statutes, especially in the Fifth Circuit, is obvious. In construing Section 19 as inapplicable to rights secured by the Fourteenth Amendment, the decision renders Section 19 ineffectual in safeguarding the very rights which it was primarily designed to protect. For, like its twin Section 20, Section 19 had its genesis in the Fourteenth Amendment and contemporaneous legislation enacted to implement the Amendment and protect the newly secured rights.

1. (a) Contrary to the decision below, the rights protected by Section 19 are not restricted to those rights "which appertain to citizens as such" or which are "*specifically* stated in the Constitution and statutes" as "*citizen's* rights" (R. 381), but include those rights which all persons in the United States possess under the Constitution. In every case under Section 19, it is necessary to allege that the victim of the conspiracy is a citizen, because the statute specifically so requires. *Baldwin* v. *Franks,* 120 U.S. 678. Nevertheless, the statute has been applied in a variety of situations involving rights which are not of a political nature, do not flow from the status of citizenship, and do not pertain to citizens as such. Indeed, not one of the rights which has been determined by the Court to be protected by Section 19 is a right which is possessed only by citizens.

Several decisions of this Court in prosecutions under Section 19 indicate that it extends to all constitutional rights, including rights guaranteed under the Fourteenth Amendment. Thus, in *United States* v. *Mosley,* 238 U.S. 383, 387, where it was held that Section 19 extended protection to the right to vote for members of Congress, the Court said that "this section dealt with Federal rights and with all Federal rights, and protected them in the lump." In *United States* v. *Classic,* 313 U.S. 299, 322, the Court observed that Section 19 secures numerous constitutional rights "which are wholly unrelated to the choice of a representative in Congress," and Mr. Justice Douglas, dissenting, also recognized that "Section 19 of the Criminal Code * * * protects every right secured by the Constitution" (p. 331; see also p. 332). Although *United States* v. *Cruikshank,* 92 U.S. 542, and *United States* v. *Harris,* 106 U.S. 629, did not involve action under color of law, these decisions nevertheless affirmed the view that the Fourteenth Amendment is an adequate basis for Congressional action against misuse of state power, and implicitly recognized that the civil rights statutes constitute valid instances of such Congressional action. See also *Powe* v. *United States,* 109 F.2d 147 (C.A. 5), certiorari denied, 309 U.S. 679; *Ex parte Riggins,* 134 Fed. 404 (N.D. Ala.), reversed on other grounds, 199 U.S. 547; *Civil Rights Cases,* 109 U.S. 3, 11; Rutledge, J., in *Screws* v. *United States,* 325 U.S. at 119-120.

The right to make a homestead entry, affirmed in *United States* v. *Waddell,* 112 U.S. 76, was not confined to citizens, but was extended to persons who had only filed declarations of intention to become citizens. R. S. 2289. The right to be protected against unlawful violence while in the custody of a United States marshal, enforced in *Logan* v. *United States,* 144 U.S. 263, under Section 19, also is not a right peculiar to citizens. Every person, whether or not he is a citizen, has the right to inform an officer of the United States of a violation of federal law. See 18 U.S.C. 4. This right was held to be protected under Section 19 in *Motes* v. *United States,* 178 U.S. 458. The right to be free from slavery or involuntary servitude is a right guaranteed by the Thirteenth Amendment to all the people, without regard to the citizenship of the person protected. *Smith* v. *United States,* 157 Fed. 721, 724-725 (C.A. 8), certiorari denied, 208 U.S. 618, held that Section 19 "is an exercise of the legislative function warranted by section 2 of the thirteenth amendment. It was enacted in view of that amendment and the right undertaken to be protected by it is undoubtedly a right secured by the amendment." The right to furnish munitions, ships and other supplies to the federal government for war purposes (*Anderson* v. *United States,* 269 Fed. 65 (C.A. 9), certiorari denied, 255 U.S. 576), and the right to enforce the decree of a federal court by contempt proceedings (*United States* v. *Lancaster,* 44 Fed. 885, 44 Fed. 896 (C.C.

W.D. Ga.)), are likewise rights which do not flow from the status of citizenship.

The political right to vote is protected by Section 19 in appropriate cases, *United States* v. *Classic,* 313 U.S. 299, *Guinn* v. *United States,* 238 U.S. 347, but, contrary to the intimation of the majority below (R. 381, 382), this right is not necessarily restricted to citizens and may extend, where the applicable state law so provides, to aliens who have declared their intention to become citizens. See *In re Wehrli,* 157 Fed. 938, 939 (E.D. Ark.). Mr. Justice Stone, speaking for the Court in the *Classic* case, *supra,* at page 314, noted that the State prescribes the qualifications of its voters, but the right to vote for members of Congress "is a right established and guaranteed by the Constitution and hence is one secured by it to those citizens and *inhabitants* of the state entitled to exercise the right" (italics supplied).

(b) It is quite clear from the legislative history of Section 19 that Congress intended by its enactment to implement and enforce the Fourteenth Amendment. Section 19 was originally enacted as Section 6 of the Enforcement Act of May 31, 1870 (16 Stat. 140). It appeared as Section 5508 of the Revised Statutes of 1875 and was later codified as Section 19 of the Criminal Code. The Enforcement Act of 1870 was entitled, "An Act to Enforce the Right of Citizens of the United States to Vote in the Several States of this Union, and for other Purposes." Although it included sections presumably based on the Fifteenth Amendment, the Act,

as noted by Flack, was undoubtedly passed primarily to enforce the provisions of the Fourteenth Amendment. *The Adoption of the Fourteenth Amendment,* pp. 225, 249. The legislative debates clearly indicate that such was the intention of Congress. Cong. Globe, Part 5, 1869-1870, p. 3808.[2]

2. The rights guaranteed by the Fourteenth Amendment are not too indefinite and vague to be covered by Section 19, as the majority below thought (R. 380, 381). Fourteenth Amendment rights are no less specific than any of the other rights which have been held by this Court and the lower courts to fall within the coverage of Section 19, such as the right to establish a claim to certain land under the Homestead Act (*United States* v. *Waddell, supra*); the right to inform an officer of the United States of a violation of the laws (*Motes* v. *United States, supra; In re Quarles and Butler,* 158 U.S. 532); the right to be protected against unlawful violence while in the custody of a United States Marshal (*Logan* v. *United States, supra*); the right to vote at elections for United States Senators or Representatives, and to have the ballot counted as cast (*United States* v. *Saylor,* 322 U.S. 385; *United States* v. *Classic, supra; Ex parte Yarbrough,* 110 U.S. 651); the right to petition Congress for a redress of grievances (*United States* v. *Cruikshank,* 92 U.S. 542); the right to furnish munitions, ships, and other supplies to the Govern-

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[2] See also Rutledge, J., in *Screws* v. *United States,* 325 U.S. at 118-121.

ment for war purposes (*Anderson* v. *United States, supra*); the right to enforce the decree of a Federal court by contempt proceedings (*United States* v. *Lancaster, supra*); and the right to appear and testify as a witness before a Land Office in a contest involving lands entered under the federal laws (*Foss* v. *United States,* 266 Fed. 881 (C. A. 9)).

None of these rights is expressly set forth in the Constitution, but, rather, the existence of each is implied by the general provisions. In the *Screws* case, 325 U.S. at 104-105, the majority of the Court accepted the view that Section 20 (and, by implication, Section 19 also) extends to every constitutional right "which has been made specific either by the express terms of the Constitution or laws of the United States or by decisions interpreting them." That the rights under the Fourteenth Amendment involved in this case—the rights not to be deprived of liberty or subjected to punishment without due process of law, to be secure in one's person while in the custody of a state and to be free from illegal assault and battery at the hands of one exercising the authority of a state, and to be tried and punished in accordance with due process of law—are specific and have been made definite by judicial decisions is apparent from the cases. See, e.g., *Chambers* v. *Florida,* 309 U.S. 227; *Powell* v. *Alabama,* 287 U.S. 45; *Civil Rights Cases,* 109 U.S. 3, 23-24; *Bute* v. *Illinois,* 333 U.S. 640; *Hurtado* v. *California,* 110 U.S. 516; *Catlette* v. *United States,* 132 F. 2d 902 (C. A. 4); *Crews* v. *United States,* 160 F. 2d 746 (C. A. 5);

United States v. *Sutherland,* 37 F. Supp. 344 (N.D. Ga.); *United States* v. *Williams,* 179 F. 2d 656 (C.A. 5, decided January 10, 1950), petition for a writ of certiorari pending, No. 354 Misc.

As applied to the Fourteenth Amendment rights here involved, Section 19 clearly provides a reasonably ascertainable standard of guilt. The validity of the statute has been sustained against similar attacks. *Motes* v. *United States,* 178 U.S. 458; *Logan* v. *United States,* 144 U.S. 263; *Ex parte Yarbrough,* 110 U.S. 651; *United States* v. *Classic,* 313 U.S. 299; and other cases cited *supra.* Thus, in the *Classic* case, the Court stated that it

> found no uncertainty or ambiguity in the statutory language, obviously designed to protect the citizen "in the free exercise or enjoyment of any right or privilege secured to him by the Constitution." [313 U.S. at 321.]

The majority below, however, without attempting to reconcile its conclusion with the decisions cited above, ruled that Section 19 would be unconstitutional for vagueness and uncertainty if it were construed to apply to Fourteenth Amendment rights. This ruling appears to rest on the view that since Section 20 was held in the *Screws* case to be valid as applied to similar facts only because it is limited to "wilful" deprivations of Fourteenth Amendment rights, Section 19 must fall because it is not so limited. The court below, however, failed properly to distinguish the two statutes or to give to the word "conspire" in Section 19 its proper meaning.

Section 19 is a conspiracy statute, providing that if "two or more persons conspire to injure," etc., any citizen "in the free exercise or enjoyment of any right or privilege secured to him by the Constitution," they shall be punished. The gist of the crime is conspiracy, an unlawful combination or agreement formed for the purpose set forth. No crime is committed unless two or more persons conspire to do what the statute proscribes, i.e., to injure a citizen in the free exercise or enjoyment of a right secured by the Constitution or laws of the United States. If they so conspire they cannot say that they knew not what they did. "* * * [I]ntent to accomplish an object cannot be alleged more clearly than by stating that parties conspired to accomplish it." *Frohwerk* v. *United States,* 249 U.S. 204, 209. By its very definition of the offense, Section 19 requires the intent of which Mr. Justice Douglas spoke in the *Screws* case as saving Section 20 from the charge of vagueness: the specific intent "to deprive a person of a right which has been made specific either by the express terms of the Constitution or laws of the United States or by decisions interpreting them" (325 U.S. at 104). The statute could not be more specific and yet serve its great purpose of protecting all constitutional rights comprehensively and without qualification.

This Court, in *Winters* v. *New York,* 333 U.S. 507, 518, acknowledged difficulties inherent in defining the precise line between permissible uncertainty in statutes caused by using words well understood through long use in the criminal law

and the "unconstitutional vagueness that leaves a person uncertain as to the kind of prohibited conduct":

> Nevertheless despite the difficulties, courts must do their best to determine whether or not the vagueness is of such a character "that men of common intelligence must necessarily guess at its meaning." *Connally* v. *General Constr. Co.*, 269 U.S. 385, 391. The entire text of the statute or the subjects dealt with may furnish an adequate standard. (Citing, among other cases, *Screws* v. *United States, supra.*)

Cf. also *United States* v. *Petrillo*, 332 U.S. 1, 5-8.

3. The trial court did not err in its charge to the jury as to the element of intent. The jury were properly instructed as to the meaning of conspiracy and its elements (R. 319-321, 325, 326, 328, 330); as to the nature of the constitutional rights involved (R. 317-319, 321-322); and as to the statute involved (R. 317-319, 322).

The majority below, as an alternative ground for decision, held that the charge was misleading and erroneous under the *Screws* decision because the trial judge instructed the jury that it is not necessary to a conviction that the jury find that the defendants understood "that what they were doing would be a violation of law," and that it is sufficient if they understood what they were doing, "even though the participants did not know that what they were doing would in fact be deemed to have been a deprivation or violation of any person's constitutional rights" (R. 320). The majority

thought that this was tantamount to instructing the jury "that knowledge that constitutional rights would be violated is not necessary to the establishment of this crime" (R. 383), and that such an instruction is erroneous under the majority's view that the *Screws* decision requires a "wilful intent to deprive of *known* constitutional rights" (R. 383; italics supplied).

We think this interpretation of the charge is erroneous. There is no justification for attributing to the criticized instructions quoted above the significance which the majority below gave them. Torn from their context, they may appear at first blush to be inconsistent with the *Screws* decision. But instructions must be read and interpreted in their entirety, and the trial judge told the jury that in considering any one instruction, they "must construe it in the light of and in harmony with every other instruction given" (R. 332). The criticized instruction was one of several preliminary instructions of a general nature and was obviously designed to inform the jury of the nature and elements of a criminal conspiracy. And, in any event, as related to a charge of conspiracy under Section 19, this general instruction was correct, for as was said by Mr. Justice Douglas in the *Screws* case (325 U.S. at 106):

> * * * The fact that the defendants may not have been thinking in constitutional terms is not material where their aim was not to enforce local law but to deprive a citizen of a right and that right was protected by the

> Constitution. When they so act they at least act in reckless disregard of constitutional prohibitions or guarantees. * * *

Furthermore, when the trial judge dealt specifically with the element of intent later in his charge, he carefully instructed the jury that (R. 322-323)—

> In order to convict under this indictment, it is necessary for the jury to find that the defendants had in mind the specific purpose of depriving the complaining witnesses of those rights guaranteed them under the Fourteenth Amendment to the Constitution of the United States, which are enumerated in the indictment, while acting under color of the laws of the State of Florida.
>
> The proof, if any, of a general intent to do the complaining witnesses a wrong is not sufficient, but a specific intent to deprive them of a Constitutional right, as the object of the conspiracy, if any, is a burden the law casts upon the Government. In considering whether the defendants had such specific intent, you may take into consideration all the circumstances of the case in the light of the evidence as it has been developed.

This instruction was reiterated in the same or similar language five times in the remainder of the charge (R. 323, 327-330). It is to be noted that these instructions paraphrase the language of the opinion of Mr. Justice Douglas in the *Screws* case defining the specific intent required under Section 20 (325 U.S. at 101, 103, 107). No more is required under Section 19. We submit that in the light of the *Screws* opinion, the Court of Appeals'

criticisms of the instructions are without foundation.

4. The trial court did not err in refusing to admit evidence concerning the previous acquittals of respondents Ford, Bombaci, and Perry on charges under Section 20. Williams, Perry, Ford, Bombaci, Yuhas, and Dania Supply Company had previously been tried on four counts for violations of Section 20, the first four being charged as officers acting under color of law, the last two as aiders and abettors. Only Williams was found guilty on these counts.[3] These same defendants were also tried at the same time on four counts of conspiracy in violation of Section 19, but a mistrial was declared with respect to these counts following the jury's inability to agree upon a verdict. These defendants were then tried on the superseding conspiracy indictment involved in this case.

At the trial, the defendants who were acquitted on the Section 20 charges urged that their acquittal was *res judicata* as to the conspiracy charges. The trial court rejected this contention (R. 19, 22, 25, 42-44, 72, 75, 76, 80-81). At the end of the Government's case, these defendants offered in support of motions for acquittal the indictment, the charge to the jury, and the verdict in the Section 20 case (R. 252, 254). The motions were denied (R. 257).

The court below properly held that the prior

[3] The Court of Appeals for the Fifth Circuit, on January 10, 1950, unanimously affirmed this conviction, 179 F. 2d 656, and Williams has filed a petition for a writ of certiorari to review this judgment. No. 354 Misc.

acquittals on the substantive charges did not constitute prior jeopardy as to the charges of the instant indictment (R. 383). But the court also held that although the prior verdicts were not strictly *res judicata,* the defendants other than Williams had a right to introduce for the "evidentiary purpose" of rebutting the inference of conspiracy "the record and the charge of the court to show what was tried before" and that "it was error to exclude them" (R. 385). As we read the opinion, the court holds that the prior acquittals should have been admitted for the jury's consideration.

We submit that the court below erred. In the first place, we think it is clear that a plea of *res judicata* is a plea in bar addressed to the Court. It presents a legal question as to what was determined by a prior verdict.

Secondly, the trial court correctly overruled the plea. The commission of a substantive crime and a conspiracy to commit it are distinct offenses. *Sealfon* v. *United States,* 332 U.S. 575, 578; *Pinkerton* v. *United States,* 328 U.S. 640, 643. The verdict of the jury in the prior prosecution that respondents Ford, Bombaci and Perry were not guilty of the substantive offenses charged or even of aiding and abetting those offenses was not a determination that they did not conspire among themselves and with the other defendants to commit those offenses, but only a determination that they did not commit or aid and abet the commis-

sion of the acts which were the objects of the conspiracy.[4] There was here no identity of facts upon which guilt either of aiding and abetting or of conspiracy necessarily depended, as was the case in *Sealfon* v. *United States, supra,* upon which the majority below relied.

CONCLUSION

For the reasons stated, it is respectfully submitted that this petition for a writ of certiorari should be granted.

PHILIP B. PERLMAN,
Solicitor General.

MARCH 1950.

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[4] The court below said that proof was offered that in the prior trial the court instructed as to all the defendants that they could be found guilty if they actually committed the offenses charged or if they counseled, commanded, aided or abetted those acts (R. 384). But reference to the record in No. 354, Misc., *Williams* v. *United States,* pp. 588-589, shows that this instruction applied only to respondent Bombaci and the defendants Yuhas and Dania Supply Company. Thus, the verdict in the prior case acquitted respondents Perry and Ford only of the commission of the offenses charged and only Bombaci as an aider and abettor.

☆ U. S. Government Printing Office: 1950 J877690/345

In the Supreme Court of the United States

OCTOBER TERM, 1950

No. 26

UNITED STATES OF AMERICA, *Petitioner*

v.

JAY G. WILLIAMS, CHARLES R. FORD, JOHN S. BOMBACI, and JOSEPH V. PERRY

On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

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BRIEF FOR THE UNITED STATES

OPINIONS BELOW

The opinions in the Court of Appeals (R. 378-394) are reported at 179 F. 2d 644.

JURISDICTION

The judgment of the Court of Appeals was entered on January 10, 1950 (R. 394). On February 8, 1950, by order of Mr. Justice Black, the time within which to file a petition for a writ of

certiorari was extended to and including March 11, 1950 (R. 395). The petition was filed on March 9, 1950, and was granted on October 16, 1950 (R. 396). The jurisdiction of this Court is conferred by 28 U.S.C. 1254(1). See also Rules 37(b)(2) and 45(a), F.R. Crim. P.

QUESTIONS PRESENTED

1. Whether Section 19 of the Criminal Code, which in terms protects every citizen in the free exercise or enjoyment of "any right or privilege secured to him by the Constitution or laws of the United States," should be narrowly construed so as to apply only to "federal rights and privileges which appertain to citizens as such."

2. Whether Section 19, if construed to protect the Fourteenth Amendment rights here involved, is unconstitutional for failure to provide a reasonably ascertainable standard of guilt.

3. Whether the trial court committed reversible error in its instructions concerning the intent required under the statute.

4. Whether the trial court committed reversible error in failing to admit evidence concerning the previous acquittals of some of the respondents of substantive offenses under Section 20 of the Criminal Code.

STATUTORY AND CONSTITUTIONAL PROVISIONS INVOLVED

Section 19 of the Criminal Code, 18 U.S.C. (1946 ed.) 51, in effect during the period involved in this case, provided:

> If two or more persons conspire to injure, oppress, threaten, or intimidate any citizen in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, or because of his having so exercised the same, or if two or more persons go in disguise on the highway, or on the premises of another, with intent to prevent or hinder his free exercise or enjoyment of any right or privilege so secured, they shall be fined not more than $5,000 and imprisoned not more than ten years, and shall, moreover, be thereafter ineligible to any office, or place of honor, profit, or trust created by the Constitution or laws of the United States.

Section 20 of the Criminal Code, 18 U.S.C. (1946 ed.) 52, provided:

> Whoever, under color of any law, statute, ordinance, regulation, or custom, willfully subjects, or causes to be subjected, any inhabitant of any State, Territory, or District to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution and laws of the United States, or to different punishments, pains, or penalties, on account of such inhabitant being an alien, or

by reason of his color, or race, than are prescribed for the punishment of citizens, shall be fined not more than $1,000, or imprisoned not more than one year, or both.

The Fourteenth Amendment to the Constitution of the United States provides:

> Sec. 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.
>
> * * * * *
>
> Sec. 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

STATEMENT

On April 22, 1949, respondents and two others, Yuhas and Dania Supply Company,[1] were convicted in the United States District Court for the Southern District of Florida, on four counts of an indictment, each charging a violation of Section

[1] Yuhas and Dania Supply Company did not appeal from their convictions, and no issue is here raised as to them.

19 of the Criminal Code (R. 1, 338, 356-365).[2] The Court of Appeals for the Fifth Circuit, on January 10, 1950, reversed respondents' convictions and quashed the indictment, Judge Waller concurring specially and Judge Holmes dissenting (R. 378-395).

The Indictment. In each count it was alleged that, on or about March 28, 1947, respondent Ford, a police officer of the city of Miami, Florida, and respondents Williams and Perry, special Miami police officers, each of whom was acting under the laws of the State of Florida and the ordinances and regulations of the city of Miami, conspired with the other defendants to injure, oppress, threaten and intimidate a different named citizen in the free exercise and enjoyment of specified rights and privileges secured to him by the Fourteenth Amendment, to wit: not to be deprived of liberty without due process of law; to be secure in his person while in the custody of the State of Florida; not to be subjected to punishment without due process of law; to be immune, while in the custody of persons acting under color of the laws of the State of Florida, from illegal assault and battery by any person exercising the authority of the State; and to be tried by due process of law and if found guilty to be sentenced and punished

---

[2] Williams was sentenced to two years' imprisonment, to run concurrently with the first two years of the four-year sentence imposed on him in the Section 20 case, now pending before this Court, No. 365; each of the other individual defendants was sentenced to imprisonment for one year and one day (R. 356-365).

in accordance with the laws of the State. It was further charged that it was the plan and purpose of the conspiracy that the defendants would arrest and detain the citizen and cause him to enter certain premises owned by Dania Supply Company and that they would, while the citizen was so detained, illegally strike, bruise, batter, beat, assault, and torture him in order illegally to coerce him to make an admission of his guilt in connection with alleged thefts of company property and to name and accuse other persons as participants in such thefts, and for the further purpose of imposing illegal summary punishment upon him. (R. 1-7.)

The Evidence. The sufficiency of the evidence adduced in support of the allegations in the indictment has not been questioned, and it is clear that the proof abundantly sustained the charges. The material facts as developed during the trial may be summarized as follows: In March 1947, Dania Supply Company, a Florida corporation doing business and known as Lindsley Lumber Company, believing that some employees were stealing lumber and other company property, employed Williams to ascertain the person or persons responsible for the thefts (R. 195, 204, 205, 231-232). Williams was head, or "chief", of the Continental Detective Bureau, and Perry and Bombaci were employed by him (R. 194-195, 205). Ford was a police officer of the city of Miami (R. 250, 257-258) and participated in the events charged in the indictment. He was present there "to see that

everything was legal" (R. 206, see also R. 201), having been assigned to the investigation by a detective captain of the Miami Police Department, at the request of the Assistant County Solicitor, Dade County (R. 260-262). Yuhas, an employee of the Company, who did not appeal his conviction in this case, was assigned by it to assist in the investigation (R. 204, 206-207).

The investigation, which was conducted under the active direction of Williams (R. 85-88, 182, 195, 232), took the form of a series of "third degree" interrogations of the four complaining witnesses, Purnell, Robinson, Priest, and Sturniolo. Over a period of three days, each was in turn taken into a small frame building, referred to at the trial as "the paint shack," where he was subjected to constant questioning punctuated by blows, kicks, slaps, and other physical punishment designed to elicit "confessions" of the thefts. Williams inflicted most of the blows, but all the respondents were present during the events and actively assisted him, both in the questioning and the beatings (as to Purnell: R. 40-42, 45-50, 202; as to Robinson: R. 53, 85-88, 202-203; as to Priest: R. 132-140, 198-200; as to Sturniolo: R. 178-183, 203). Purnell was struck by Williams and was subjected to other abuses for "hours" until he was dazed (R. 45-50, 201-202). Robinson was detained and questioned at the shack for "hours" (R. 88), during which time he was kicked by Bombaci (R. 91) and struck by Williams, who beat and then flogged Robinson until he stated what was expected

of him (R. 85-88, 202-203). Priest was held in custody for about 14 hours, from about noon (R. 132) to "after two o'clock in the morning" (R. 139). During this entire period, he was kept in the shack and subjected to intensive questioning, assaults and other mistreatment, with but one recess of "forty or forty-five minutes" when he was handcuffed by Williams and kept in an automobile that was parked near the shack (R. 133-140, 198-199). After this brief respite, afforded Priest "because they [respondents] wanted to wait until Mr. Ford got there, because he was bringing a shillelagh; they really wanted to work him over" (R. 199), Priest was returned to the shack by Williams when "all four of them came in there . . . [and] beat me down again" (R. 135). Ford lafer unsuccessfully attempted to stop the mistreatment of Priest, admonishing respondents that "you have beat on that old man enough" (R. 137). Respondents continued their interrogation and beating of Priest until early morning (R. 137-139, 199-200). Sturniolo was threatened, subjected to lengthy questioning over a period of two and one half hours (R. 181), and beaten (179-180, 203). Each of the victims was forced to sit in a chair directly under a brilliant electric light (R. 45, 85, 133, 202-203), and was rammed with a "shillelagh", hit, slugged, knocked off his chair or seat, and generally assaulted and abused, physically and verbally (R. 198-203). Each suffered bodily injuries and great pain (R. 55, 70-71, 79; 87, 91, 111-114, 121, 123, 126; 142, 155, 158, 163; 155, 193-194).

Giroux, a former employee of Williams' detective agency who had pleaded guilty to four counts under Section 20 of an earlier indictment, was a witness for the Government in this trial (R. 194-209, 218-241). His testimony as to Priest (R. 196, 198-199) is typical:

> Q. Let's take the case of Mr. Priest on the 27th of March, 1947. Were you present when he was in the paint shack?
>
> A. Yes, sir.
>
> Q. Your best recollection as to when the operation involving Mr. Priest started on that day, was it before night or after night when you were first present with Mr. Priest?
>
> A. Well, he was beaten twice, you know.
>
> Q. Yes.
>
> A. Once after they got through with him in there they took him out and handcuffed him to the car.
>
> Q. The first time, when did that first start, as near as you can recall, with reference we will say before or after noon in relation to the noon hour?
>
> A. It was after lunch time, because we didn't get out there until after lunch.
>
> Q. Will you state what you did in the process that went on in that shack?
>
> A. Well, I was clerk. I kept track of the notes and stuff. Whatever they wanted me to put down I put down.

* * * *

Q. Go ahead and tell what happened to Mr. Priest.

A. Well, they brought him in there. They started questioning him, Chief Williams. He said he didn't know anything. Whenever he would say that he would knock him off the stool and tell him to get up. There was a light; he had to look up at this light all the time. At times Mr. Priest would say, "Well, it is hurting my eyes; it is blinding me." He would say, "Look up there, anyway." Of course, he used a couple of words; I daren't say those.

Q. Say it.

A. It was cursing.

Q. Go ahead. We are not children.

A. Williams said, "You old son-of-a-bitch, you are going to tell us the truth if we have to keep you here until midnight we are going to find out the truth," He kept using those terms all the time. He knocked him off the stool, picked him up and knocked him off again, and made him get up. It went on so many times—I don't know how many. When they got all through with him there they took him out and handcuffed him to the car. At that time I was present and Mr. Yuhas was present at all times, and Lieutenant Perry was present and Chief Williams.

Q. Was Mr.—

A. But they brought him in again.

Q. I understand that. I will ask you—I don't want to suggest any name to you. You have stated that Williams was present, that Yuhas was present, and I believe you said Mr. Perry was present, did you not?

A. That is right.

Q. Was there any other person present there during this first period of interrogation and, as you characterized it, abuse?

A. No, sir, not during the first beating.

Q. How long was Mr. Priest kept in there that time, or about what time was he taken out, I will put it?

A. He was in there a matter of hours; I wouldn't know exactly. I didn't have a watch or nothing, but it was a long time.

Q. You say he was taken out. What was done with him when he was taken out?

A. Well, he was handcuffed to the car steering wheel. I didn't handcuff him, but as I went to lunch later on with Mr. Bombaci we seen him handcuffed in the car.

Q. When did Mr. Bombaci come in?

A. I don't recall the exact time he came in, but he come in and it was about that time that they decided to hold off for a while, because they wanted to wait until Mr. Ford got there, because he was bringing a shillelagh; they really wanted to work him over. They also wanted Mr. Ford there to make sure there wouldn't be any squawks. Naturally, they had to wait until he got there. He was there

earlier and he left and come back, but he didn't go in the shack. Bombaci come, and Bombaci—

Q. You say Mr. Ford was there earlier in the day but didn't go inside of the shack?

A. That is right.

Q. All right.

A. He didn't go inside of the shack. He said he would be back later. He was told to bring this shillelagh with him.

Q. Who told him to bring the shillelagh with him?

A. Williams; Chief Williams.

Q. Do you know—go ahead.

A. Well, you still want Mr. Priest?

Q. Yes. Go ahead.

A. They brought him back in the second time, and Bombaci got hold of a stick. He had a stick about that long (indicating). It is a piece of doweling. He kept hitting him and poking him and cussing. Bombaci called him a dirty bastard, old son-of-a-bitch and everything else. The Chief went on like that. The Chief looked him right in the face and said, "You are a dirty bastard. What do you want to do about it?" They kept on doing that. They kept knocking him down, picking him up, knocking him down and picking him up, and making him look into the light. They just went on until finally they figured he had

enough, and Detective Ford called Williams over and said, "I think the old bastard has told about all he is going to tell. Why don't you knock off? We will probably have a big day tomorrow." That was the conclusion of his beating.

At the time of these events, Williams and Perry were special police officers of the City of Miami, appointed by the Director of Public Safety of the city. They held special police officer cards signed by the Chief of Police and the Director of Public Safety (R. 245, 247).[3] Ford was a regular police officer of the city (R. 250). It is not contended that the actions of these respondents were not under color of law. It was testified that Williams "threw back his coat" to exhibit a badge to Mrs. Elsie Hannon, Robinson's sister, when he and Bombaci went to Robinson's home on March 28, 1947 (R. 107-108, 117); that he informed Priest that "We work for the FBI, out of the FBI office" as an introduction to the mistreatment Priest was

[3] The special police officers' cards were issued under the authority of Section 24(a) of the Charter of the City of Miami, which provides:

> No person, except as otherwise provided by general law or this charter, shall act as special police or special detective except upon written authority from the director of public safety. Such authority, when conferred, shall be exercised only under the direction and control of the chief of police and for a time specified in the appointment.

(R., No. 365, p. 346.)

to be subjected to (R. 133); and that his conduct generally suggested that he was acting as an officer of the law vested with proper authority (R. 161, 45-46, 84, 133-135, 141, 180, 182). Ford made it known to each of the victims that he was a police officer, and told them during the beatings that they were "under arrest". Giroux testified that Ford "done that to all prisoners. When they started to objecting to the beating he would show them his badge." (R. 200; and see R. 202, 206, 209.) Williams and Ford handcuffed each of the victims to prevent escape before he could be questioned and, after the interrogations were completed and "confessions" obtained, transported three of them to the local jail where they were locked up in cells (R. 50, 85, 88, 135, 183; 89-90, 91, 138-140, 185-186). None of the complaining witnesses was prosecuted for the alleged offenses for which he had been beaten and arrested, and to which he had "confessed".

On appeal to the Court of Appeals, the judgments of conviction were reversed with directions to quash the indictment (R. 394-395). The majority opinion delivered by Judge Sibley held, first, that the conspiracy charged against respondents was not an offense under Section 19, properly construed (R. 380-383); second, that, in any event, the trial court failed to charge the jury properly that "wilful deprivation of a known federal right was meant [by the statute] and was a necessary ele-

ment of the conspiracy" (R. 383); and third, that with respect to the respondents other than Williams, the trial court should have admitted the "record and the charge" of their prior acquittals on the Section 20 counts as evidence of their innocence of the conspiracy charges (R. 384-385). Judge Waller, while concurring in Judge Sibley's opinion, also filed a separate opinion (R. 385-390). Judges Holmes wrote a dissent (R. 390-394).[4]

SPECIFICATION OF ERRORS TO BE URGED

The Court of Appeals erred:

1. In holding that Section 19 should be narrowly construed to apply only to those "rights and privileges which appertain to citizens as such," and not to apply to the constitutional rights involved here, which are secured by the Fourteenth Amendment

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[4] Respondents were previously indicted, on November 15, 1948, on eight counts, four under Section 19 and four under Section 20 of the Criminal Code. Respondent Williams was convicted on the Section 20 counts, and his conviction was affirmed by the Court of Appeals. 179 F. 2d 656 (C. A. 5). On October 16, 1950, Williams' petition for certiorari was granted, No. 365. The other defendants were acquitted on the Section 20 count. The jury disagreed, however, on the Section 19 counts, with the consequence that the respondents were again tried, under the present indictment, on those counts.

Respondents Williams, Ford, and Bombaci, and Andrew J. Yuhas were also indicted for perjury alleged to have been committed during the first trial. Probable jurisdiction in that case, No. 134, was noted by this Court on October 16, 1950; and that case is scheduled to be argued together with No. 365 and the present case.

and have been made specific and definite by judicial decisions.

2. In holding that if Section 19 is construed to apply to the Fourteenth Amendment rights here involved, it is to that extent unconstitutional for failure to provide a reasonably ascertainable standard of guilt.

3. In holding that the trial court committed reversible error in failing properly to instruct the jury as to the intent required under the statute.

4. In holding that the trial court committed reversible error in refusing to admit evidence concerning the acquittals of respondents Ford, Bombaci, and Perry on a previous indictment, charging them with substantive offenses under Section 20 of the Criminal Code.

5. In reversing respondents' convictions and directing that the indictment be quashed.

SUMMARY OF ARGUMENT

I

Contrary to the decision below, the rights protected by Section 19 against conspiracies are not restricted to those rights "which appertain to citizens as such," or which are "*specifically* stated in the Constitution and statutes" as "*citizen's* rights" (R. 381). While Section 19 protects the rights only of citizens, it protects all their federal rights and is not limited to those rights which they

possess solely because they are citizens. This Court has in numerous cases upheld application of the Act to rights which are not of a political nature, do not flow from the status of citizenship, and are not peculiar to citizens as such. Indeed, none of the rights which has been determined by this Court and the lower courts to be protected by Section 19 is a right which is possessed only by citizens. And the legislative history of the statute clearly reflects a purpose to include the rights secured by the Fourteenth Amendment.

The rationale of *Screws* v. *United States*, 325 U. S. 91, assuming its applicability to Section 19, is satisfied here. The Fourteenth Amendment rights involved in this case are no less specific than any of the other rights which have been held by this Court and the lower courts to fall within the scope of Section 19, such as the right to establish a claim under the Homestead Act, the right to inform an officer of the United States of a violation of the laws, the right to be protected against unlawful violence while in the custody of a federal officer, the right to vote for members of Congress, the right to petition Congress for a redress of grievances, the right to furnish military supplies to the Government for defense purposes, the right to enforce federal court decrees by contempt proceedings, and the right to appear and testify before a federal agency. None of these rights is expressly set forth in the Constitution or statutes,

but, rather, the existence of each is implied by general provisions of law. The concern expressed by the court below as to "the extreme vagueness" of the due process clause "as a standard of individual conduct" (R. 380, 382) is unwarranted as applied to the specific constitutional rights involved in this case. If such Fourteenth Amendment rights are enforceable under Section 20 of the Criminal Code, as they are under the majority rulings in the *Screws* case, there is no basis for holding such rights unenforceable under its statutory companion, Section 19.

Analysis of its legislative history discloses that Section 19 contains a clearly implied requirement of the same "specific intent" which in the *Screws* case was found sufficient to save Section 20 from being unconstitutionally indefinite. As applied to the Fourteenth Amendment rights here involved, Section 19 clearly provides a reasonably ascertainable standard of guilt. The absence from Section 19, in its present form, of an express requirement that the conspiracy be entered into "willfully" is of no significance. In its original form, as enacted in 1870, Section 19 expressly required an intent to deprive the victim of his federal rights; and the legislative history does not show that Congress intended to eliminate this requirement from Section 19 in its present form. The word "conspire" in Section 19, if given its proper meaning in the light of the legislative history, se es the same purpose

and has the same effect as "willfully" in Section 20. By its very requirement of proof of conspiracy, Section 19 requires the intent which Mr. Justice Douglas's opinion in the *Screws* case regarded as saving Section 20 from being too indefinite: the specific intent "to deprive a person of a right which has been made specific either by the express terms of the Constitution or laws of the United States or by decisions interpreting them" (325 U. S. at 104). The statute could not be more specific and yet serve its great purpose of protecting all constitutional rights comprehensively and without qualification. The general language of Section 19 is not so vague "that men of common intelligence must necessarily guess at its meaning" (*Connally* v. *General Construction Co.*, 269 U. S. 385, 391); rather, as was held in the *Screws* case with respect to Section 20, when confined "narrowly" to cases where the requisite specific intent exists, it provides an ascertainable standard of guilt and "gives a person acting with reference to the statute fair warning that his conduct is within its prohibition" (325 U. S. at 100, 104).

II

The trial court did not err in its charge to the jury as to the offense generally or as to the necessary specific intent. The jury were properly instructed as to the meaning of conspiracy and its elements (R. 319-321, 325, 326, 328, 330); as to the

nature of the constitutional rights involved (R. 317-319, 321-322); and as to the statute involved (R. 317-319, 322). With respect to specific intent, the trial court, following closely the language of Mr. Justice Douglas's opinion in the *Screws* case, carefully explained the difference between a general evil purpose and the specific intent to deprive the complaining witnesses of "those rights guaranteed them under the Fourteenth Amendment to the Constitution of the United States, which are enumerated in the indictment" (R. 322-323). The necessary instruction as to specific intent, as defined in the *Screws* case, was reiterated in similar language five times in the charge (R. 323, 327-330). In these circumstances it was not error, as the court below thought, for the trial court to refuse to use the word "willful" in defining the offense.

III

The trial court did not err in refusing to admit evidence concerning the previous acquittals of respondents Ford, Bombaci, and Perry on charges under Section 20. The court below, while correct in holding that the prior acquittals on those charges did not constitute prior jeopardy as to the charges in the instant indictment (R. 383), erroneously held that these respondents had a right to introduce, for the "evidentiary purpose" of rebutting the inference of conspiracy, "the record and the charge of the court to show what was tried before",

and that "it was error to exclude them" (R. 385). A plea of *res judicata* is, of course, a plea in bar addressed to the court, presenting a legal question as to what was determined by a prior verdict. It does not present a question of fact to be submitted to the jury. In any event, the trial court correctly overruled the plea, since the commission of the substantive crime and a conspiracy to commit it are distinct offenses. *Sealfon* v. *United States*, 332 U. S. 575, 578. And in this case, there was no identity of facts upon which guilt either of aiding and abetting or of conspiracy necessarily depended, as was true in the *Sealfon* case.

ARGUMENT

I

Section 19 Should Be Construed as Protecting the Specific Fourteenth Amendment Rights Here Involved; and as so Construed and Applied, It Satisfies the Constitutional Requirement of Definiteness.

Section 19 of the Criminal Code, now contained in 18 U. S. C. 241 (1948 rev.), makes it a felony to conspire "to injure, oppress, threaten, or intimidate any citizen in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States * * *." The all-embracive language of the section certainly includes the Fourteenth Amendment rights involved in this case. The court of appeals considered it necessary, however, to read an implied limitation into the section in order to save it from being un-

constitutionally vague and indefinite. Referring to similar difficulties encountered by this Court in *Screws* v. *United States*, 325 U. S. 91, which involved application of the companion provision, Section 20, the court below noted that "by a closely divided court that statute [Section 20] was upheld because it provided that 'willful' violations only were to be crimes" (R. 380); and that with regard to Section 19, "we are faced by the absence of the word 'wilful' to help the vagueness", and although "'conspire' indeed has some connotation of criminality, * * * we do not think the word has the force or effect of 'wilfully' in Sec. 20" (R. 382-383). The court concluded that in order to be valid, Section 19 must be restricted in its application to "the federal rights and privileges which appertain to citizens as such and not the general rights extended to all persons by the clause of the Fourteenth Amendment." (R. 381.)

In thus reading Fourteenth Amendment rights out of Section 19 and limiting its scope to only such rights as "appertain to citizens as such", the court below also relied heavily upon the fact that, unlike Section 20 which protects "inhabitants," Section 19 protects only "citizens." We shall show, however, that while Section 19 differs from Section 20 in the class of persons protected, there is no difference between them as to the class of *rights* safeguarded; that Section 19 is not limited to those rights which are peculiar to citizenship and are

possessed only by citizens as an incident of their status as citizens; that the construction made by the court below cannot be reconciled with numerous decisions of this Court applying Section 19 to a vast range of rights, none of which is possessed only by citizens; that the narrow construction placed on Section 19 by the court below is not necessary in order to save the statute's constitutionality; that if Section 19 is construed in the same manner as Section 20 was by the opinion of Mr. Justice Douglas in the *Screws* case, namely, as requiring a "specific intent to deprive a person of a federal right made definite by decision or other rule of law" (325 U. S. at 103), such construction satisfies any constitutional objection based on vagueness; and that in holding Section 19 inapplicable to rights secured by the Fourteenth Amendment, the decision below renders Section 19 wholly ineffectual in safeguarding the very constitutional rights, the rights newly secured by the Amendment, which the section was primarily designed to protect.

A. *The Screws case.* Because of its obvious importance here, we begin with a brief review of the rulings made in *Screws* v. *United States*, 325 U. S. 91. In that case petitioners, local law-enforcement officers, were convicted under Section 20 for having arrested a man for a state offense and wrongfully beating him to death. They made two main contentions before this Court: (1) that they had not acted "under color of law," as required by Section

20, since their actions were in violation of state law and hence were not authorized by the state; and (2) that Section 20, in penalizing deprivations of "any rights, privileges, or immunities secured or protected in the Constitution and laws of the United States," was unconstitutionally vague and indefinite, and failed to provide an ascertainable standard of guilt.

Petitioners' first contention was expressly rejected by a majority of the Court. The opinion of Mr. Justice Douglas, in which Mr. Chief Justice Stone, Mr. Justice Black and Mr. Justice Reed concurred, held that petitioners acted under color of law, exercising power and duties possessed by virtue of their official positions, and that such acts did not cease to be under color of law because the officers exceeded or abused their authority in violation of local law. (325 U. S. at 107-113.) Mr. Justice Rutledge, concurring in the result, and Mr. Justice Murphy, dissenting, would have affirmed petitioners' convictions, and both clearly agreed with Mr. Justice Douglas's opinion on this point. (Pp. 113-117, and 134-138.) Only Justices Roberts, Frankfurter, and Jackson, dissenting, thought that actions in violation of state law were not "under color of law," within the meaning of Section 20. These Justices expressly recognized, however, that "the majority of the Court do not share this conviction that the action of the Georgia peace officers was not perpetrated under color of law" (p. 149).

Hence it may be taken as settled, both by the opinions in the *Screws* case and by the Court's holding in *United States* v. *Classic,* 313 U. S. 299, 326, that acts done by state officials by virtue of authority possessed under state law do not lose their character as state action under color of law because they involve an abuse and violation of such authority.

On the second point in the *Screws* case, the Government argued that Section 20 should be construed in accordance with its broad terms to apply to every deprivation of any constitutional right, and that as so construed the statute would not be too indefinite. Only Mr. Justice Rutledge and Mr. Justice Murphy were willing to accept the Government's construction. (325 U. S. 113-138.) The four Justices for whom Mr. Justice Douglas spoke, while rejecting the Government's construction as too broad, were reluctant "to say that when Congress sought to enforce the Fourteenth Amendment in this fashion it did a vain thing. * * * Only if no construction can save the Act from this claim of unconstitutionality are we willing to reach that result. We do not reach it, for we are of the view that if § 20 is confined more narrowly than the lower courts confined it, it can be preserved as one of the sanctions to the great rights which the Fourteenth Amendment was designed to secure." (P. 100.) Relying upon the express statutory requirement that only acts done "willfully" are

punishable, the four Justices held that the Act could be saved from the infirmity of vagueness by being construed as requiring a "specific intent" to violate those rights which have "been made specific either by the express terms of the Constitution or laws of the United States or by decisions interpreting them." (P. 104.) On their view of the statute, the four Justices concluded that the jury had not been properly instructed and the case therefore had to be remanded for a new trial. Mr. Justice Rutledge concurred in this disposition of the case in order to avoid a stalemate (p. 134).[5] The dissenting opinion of Justices Roberts, Jackson and Frankfurter agreed with petitioners that the statute, as construed and applied by the lower courts, was unconstitutional for failure to provide an ascertainable standard of guilt.

It is clear, therefore, that six of the Justices in the *Screws* case agreed that Section 20 is applicable to at least some rights secured by the Fourteenth Amendment. Four of these Justices held that the statute could validly extend only to those Fourteenth Amendment rights which had been made definite by express constitutional or statutory provisions or by judicial decisions. The other two of the six Justices would have applied the statute not only to such rights but also to all other rights secured by the Fourteenth Amendment. That Section 20 applies to "specific" Fourteenth

[5] On such subsequent retrial the defendants were acquitted.

Amendment rights, and that as so applied it is valid, was thus plainly upheld by a majority in the *Screws* case.

In the companion case to this one, No. 365, involving the validity of Williams' conviction under Section 20, the Government is assuming the correctness of the construction placed upon that section by the opinion of Mr. Justice Douglas in the *Screws* case. Since the Fourteenth Amendment rights found to have been violated in No. 365, like those involved in this case, have unquestionably been made specific and definite by numerous decisions of this Court (see pp. 50-52, *infra*), it is unnecessary for the Government to renew the contention that the statutory protection afforded by Sections 19 and 20 has a broader scope, extending to all federal rights regardless whether they have been made definite and specific prior to the alleged offense. In the present case we are assuming, *arguendo,* that the rationale of Mr. Justice Douglas's opinion in *Screws* has equal application to Section 19 as to Section 20, and that both provisions are saved from unconstitutional indefiniteness by being restricted to cases where there is an intent to violate rights which have been made specific either by the express terms of the Constitution or statutes, or by decisions interpreting them. To be sure, Section 19 in its present form contains no express requirement of intent. But, as we shall show, *infra,* pp. 32-39, in its original form as enacted in 1870 the section expressly defined the

conspiracy offense as including a requirement of intent, and the legislative history of Section 19 shows that, although Congress changed the form of the statute, it did not change its substance. Hence, as was stated in *United States* v. *Mosley*, 238 U. S. 383, 387, Section 19 means today what it meant in 1870.

B. *Legislative History of Section 19.* Section 19 had its origin in Section 6 of the so-called Enforcement Act of 1870 (16 Stat. 140, 141). That Act grew out of a House bill (H. R. 1293, 41st Cong. 2d sess.) which was primarily concerned with enforcement of the Fifteenth Amendment. That bill was passed by the House, without debate, on May 16, 1870. See Flack, *Adoption of the Fourteenth Amendment*, p. 219. While the bill was under consideration by the Senate, Section 6, together with other provisions, was added. That section was one of the several amendments introduced by Senator Pool of North Carolina. The Senator's statements in support of the provisions proposed by him clearly indicate that it was their purpose not only to protect voting rights conferred by the Fifteenth Amendment, but also the right of liberty newly secured by the Fourteenth Amendment. Senator Pool stated:[6]

> * * * I believe that we have a perfect right under the Constitution of the United States,

[6] 91 Cong. Globe 3611, 3613.

not only under these three amendments [Thirteenth, Fourteenth and Fifteenth], but under the general scope and features and spirit of the Constitution itself, to go into any of these States *for the purpose of protecting and securing liberty*. I admit that when you go there for the purpose of restraining liberty, you can go only under delegated powers in express terms; but to go into the States for the purpose of securing and protecting the liberty of the citizen and the rights and immunities of American citizenship is in accordance with the spirit and whole object of the formation of the Union and the national Government.

There are, Mr. President, various ways in which the right secured by the Fifteenth Amendment may be abridged by citizens in a State. * * * I believe the language of the Senate Bill is sufficiently large and comprehensive to embrace any other class of officers that might be charged with any act that was necessary to enable a citizen to perform any prerequisite to voting. But, sir, *individuals may prevent the exercise of the right of suffrage; individuals may prevent the enjoyment of other rights which are conferred upon the citizen by the Fourteenth Amendment, as well as trespass upon the right conferred by the Fifteenth.* Not only citizens, but organizations of citizens, conspiracies, may be and are, as we are told, in some of the States formed

for that purpose. I see in the fourth section of the Senate bill a provision for cases where citizens by threats, intimidation, bribery, or otherwise prevent, delay, or hinder the exercise of this right; but there is nothing here that strikes at organizations of individuals, at conspiracies for that purpose. I believe that any bill will be defective which does not make it a highly penal offense for men to conspire together, for the express purpose of contravening the right conferred by the Fifteenth Amendment.

* * * *

* * * That the United States Government has the right to go into the States and enforce the Fourteenth and Fifteenth Amendments is, in my judgment, perfectly clear, by appropriate legislation that shall bear upon individuals.

* * *

I believe that the United States has the right, and that it is an incumbent duty upon it, to go into the States to enforce the rights of the citizens against all who attempt to infringe upon those rights when they are recognized and secured by the Constitution of the country. If we do not possess that right the danger to the liberty of the citizen is great indeed in many parts of this Union. I think this question will come time and again as years pass by, perhaps before another year, in different forms before the Senate. It is

well that we should deal with it now and deal with it squarely * * *.

Mr. President, the liberty of a citizen of the United States, the prerogatives, the rights, and the immunities of American citizenship, should not be and cannot be safely left to the mere caprice of States either in the passage of laws or in the withholding of that protection which any emergency may require. *If a State by omission neglects to give to every citizen within its borders a free, fair, and full exercise and enjoyment of his rights it is the duty of the United States Government to go into the State, and by its strong arm to see that he does have a free enjoyment of those rights.* [Italics supplied.]

Senator Pool's concept of the Federal Government's power to punish infringements of liberty by private individuals was broader than that which was to prevail in subsequent decisions of this Court. But the significant fact, for present purposes, is the presence of such a clear indication in the legislative history of Section 19 that its original sponsor intended the protection of rights of liberty under the Fourteenth Amendment as well as voting rights under the Fifteenth Amendment. Aside from Senator Pool's remarks, and brief but not particularly illuminating references made by Senator Stewart to the provisions which the for-

mer had introduced, 91 Cong. Globe 3559, 3658, nothing of significance further appears in the debates preceding enactment of the legislation.

Section 6 of the Enforcement Act of 1870, as enacted, provided as follows (16 Stat. 141):

> That if two or more persons shall band or conspire together, or go in disguise upon the public highway, or upon the premises of another, with intent to violate any provision of this act, or to injure, oppress, threaten, or intimidate any citizen *with intent to prevent or hinder his free exercise and enjoyment of any right or privilege granted or secured to him by the Constitution or laws of the United States,* or because of his having exercised the same, such persons shall be held guilty of felony, and, on conviction thereof, shall be fined or imprisoned, or both, at the discretion of the court,—the fine not to exceed five thousand dollars, and the imprisonment not to exceed ten years,—and shall, moreover, be thereafter ineligible to, and disabled from holding, any office or place of honor, profit, or trust created by the Constitution or laws of the United States. [Emphasis supplied.]

It should be noted that Section 6 made two express references to "intent", and that as to the conspiracy offense, the Government was specifically required to prove an intent to prevent or hinder the free exercise and enjoyment of any

right or privilege secured by the Constitution or laws of the United States.

Four years afterwards, Congress revised and codified the statutes of the United States, and Section 6 of the Enforcement Act of 1870 became Section 5508 of the Revised Statutes, reading as follows:

> If two or more persons conspire to injure, oppress, threaten, or intimidate any citizen in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, or because of his having so exercised the same; or if two or more persons go in disguise on the highway, or on the premises of another, with intent to prevent or hinder his free exercise or enjoyment of any right or privilege so secured, they shall be fined not more than five thousand dollars and imprisoned not more than ten years; and shall, moreover, be thereafter ineligible to any office, or place of honor, profit, or trust created by the Constitution or laws of the United States.

The language of the 1874 revision differs to some extent from the original language of Section 6 of the 1870 Act. A careful search of the legislative history of the 1874 revision discloses that the revisers neither intended nor were authorized to make any substantive changes in the statutory pro-

vision.[7] Nor do the legislative materials furnish any light on the reasons for the textual alterations

[7] The Act of June 27, 1866 (14 Stat. 74), provided for the appointment of three commissioners "to revise, simplify, arrange, and consolidate all statutes of the United States." Section 2 restricted the commissioners' duties to consolidating similar but scattered provisions, omitting redundant or obsolete enactments, reconciling contradictions, amending textual imperfections, etc. No authority to alter substance was given. In their interim and final reports (Sen. Misc. Doc. No. 101, 40th Cong., 2d Sess.; House Misc. Doc. No. 31, 40th Cong., 3d Sess.; Sen. Misc. Doc. No. 3, 42d Cong., 2d Sess.) the commissioners explicitly recognized these limitations on their authority, and disclaimed any intention of making substantive changes in existing law.

The Act of March 3, 1873 (17 Stat. 579), created special committees in the House and Senate to receive and examine the commissioners' draft revision. On January 14, 1874, H. R. 1215, the bill which became the Revised Statutes, was reported to the House by Mr. Poland, chairman of the House Committee on Revision of the Laws (2 Cong. Rec. 646). He described the background and purpose of the bill as follows:

> This work, as gentlemen know, was done by three commissioners appointed under a law of Congress. Their labors were completed last May. Under a law passed on the very last day of the last session of Congress, a subcommittee of the Committee on Revision of the Laws employed Mr. Durant, a lawyer of eminence in this city, to go over this revision and put it in the form of a bill to be brought before the House. The volume I hold in my hand is the work as completed by Mr. Durant, going over the work of the commission.
>
> The committee have decided that in their judgment it was not advisable to attempt any change whatever in the existing law. By the original law of 1866, under which the commissioners were appointed, they were authorized

made by the revisers with respect to Section 6. Instead of referring twice to intent, as Section 6 did, Section 5508 contains only a single clause deal-

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to make changes to some extent, of which liberty they availed themselves—probably not to any greater extent than they were warranted in doing by the law under which they were appointed. But the Committee on Revision of the Laws at the last Congress came to the conclusion that within the limited time that could be allowed for the work in this House, it would be utterly impossible to carry the measure through, if it was understood that it contained new legislation. Therefore *the committee*, when they employed Mr. Durant to go over this work, *directed him, in every case where he found that new legislation had been inserted by the commissioners, to strike out such modifications of the existing law. This, of course, did not refer to mere changes of phraseology not affecting the meaning of the law;* but he was directed, wherever the meaning of the law had been changed, to strike out such changes. Mr. Durant has in the main done this.

* * *

The committee are aware that in the multiplicity of engagements members of Congress have no time to go over this work to any great extent, and therefore we expect, if this work shall be adopted by Congress at all, it will be mainly upon their faith in the commissioners and in the committee which has it in charge. Since the commencement of this session, since this work has been laid before the Committee on Revision of the Laws, they have been patiently and faithfully at work endeavoring to go over it with care, so we shall be able to assure the House the work has been presented with such changes and amendments as we find necessary to make that it will be an exact transcript, an exact reflex, of the existing statute law of the United States—that there shall be nothing omitted and nothing changed. [Emphasis added.]

Throughout the debates in the House Mr. Poland, in charge

ing with intent, and because of the semicolon in the middle of the sentence after the word "same,"[8] the

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of the measure, reiterated again and again that no substantive changes in existing law had been made:

> Mr. Maynard. I understand the gentleman to say that they do not contemplate any modification of existing law.
>
> Mr. Poland. Not at all; not the slightest. [pp. 647-648]
>
> * * * We intend to have this revision present the law just as it now is. [p. 1029]
>
> "Let me say, as I have said a great many times since we began this revision, that we do not purpose to alter the law one jot or tittle." (p. 1210)
>
> * * * our ambition, if we have any upon this subject, is to make the revision correspond exactly with the law as it is—to incorporate the whole law, and nothing more [p. 1461]

The revision passed the House on April 1, 1874, with minor amendments not pertinent here (p. 2714). On May 27, 1874, the House bill was presented to the Senate and adopted that day after very brief discussion (p. 4284). It was signed by the President on June 22, 1874.

[8] Further evidence as to the significance, or lack of it, of this semicolon is to be found in the fact that it was replaced by a comma in the 1909 revision (see 35 Stat. 1092, quoted *supra*, p. 3), which is the effective statute in the case. In the 1948 revision, 62 Stat. 683, 696, 18 U.S.C. 241, the semicolon was restored and the section divided into three paragraphs, as follows:

> If two or more persons conspire to injure, oppress, threaten, or intimidate any citizen in the free exercise or

provision can be read so that the "intent" clause is applicable only to the offense of going in disguise on the highway, etc. We believe, however, in the absence of any affirmative indications that Congress intended that the difference in language should effect a difference of substance, that Section 5508 is not to be construed as eliminating, with respect to the conspiracy offense, the requirement in Section 6 of the 1870 Act of proof of an intent to prevent or hinder the free exercise or enjoyment of the federal right. Although no evidence is available to support conjecture as to their motives, it is possible that the revisers intended that the intent clause of Section 5508 should, notwithstanding the semicolon, be read as qualifying both offenses, and not merely that of going on the highway, etc. It is possible, also, that the revisers may have considered it redundant to add to the first clause of the section, defining the conspiracy offense, the further words "with intent to prevent

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enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, or because of his having so exercised the same; or

If two or more persons go in disguise on the highway, or on the premises of another, with intent to prevent or hinder his free exercise or enjoyment of any right or privilege so secured—

They shall be fined not more than $5,000 or imprisoned not more than ten years, or both.

The legislative history of neither the 1909 nor the 1948 revision discloses any discussion of the reasons for these changes of punctuation.

or hinder, etc." The revisers may well have believed (and correctly so, as we shall later argue, see pp. 58-60) that the word "conspire" necessarily implies proof of a deliberate, intentional agreement or plan of action, and hence that the addition of an intent clause to the definition of the conspiracy offense would be needless surplusage. An express requirement of intent may have been deemed textually necessary in defining the offense of going on the highway, since the latter required no proof of conspiring.

If, as the *Screws* case indicates, the constitutionality of the statute depends upon the requirement of *scienter*, which was expressly contained in Section 19 as originally enacted in 1870, one should not attribute to the revisers in 1874 a purpose of making a substantive change in the section which would have the effect of making it unconstitutional. Doubtful questions of statutory construction must, of course, be resolved in favor of constitutionality. Consequently, it is not fatal to Section 19 that, unlike Section 20, it does not in its present form expressly contain the word "willfully". The requirement of "specific intent," if deemed necessary to save it from unconstitutional vagueness, is present by clear implication.

Our conclusion is supported by *United States* v. *Mosley*, 238 U. S. 383. In that case the Court upheld a conviction under Section 19 of the Criminal Code for conspiring to interfere with voting rights

by failing to count ballots cast. It was contended that such a conspiracy had also been made an offense by Section 4 of the Enforcement Act of 1870, which provided a much milder penalty than that under Section 6. It was argued that Congress therefore did not intend such a conspiracy to be punished under the general language of Section 6. In rejecting this argument the Court's opinion, delivered by Mr. Justice Holmes, stated that Section 19 of the Criminal Code "must mean what it meant in 1870 when the Enforcement Act was passed, and what it did mean will be seen more clearly from its original words" (p. 387). Reviewing the words of the section in its original form, the Court concluded that in Section 6 "Congress put forth all its powers" and that "this section dealt with Federal rights and with all Federal rights, and protected them in the lump" (*ibid*). After pointing out further that Section 6 "had a general scope and used general words that have become most important now that the Ku Klux have passed away", the Court said: "The change of emphasis is shown by the wording already transposed in Rev. Stat., § 5508, and now in § 19. The clause as to going in disguise upon the highway has dropped into a subordinate place, and even there has a somewhat anomalous sound. The section now begins with sweeping general words. Those words always were in the act * * *". (P. 388.)

C. *Comparison of Sections 19 and 20.* As previously pointed out, Section 19 differs from Section 20 in the class of persons protected; the former protects "citizens", the latter "inhabitants." There is no difference between them, however, with respect to the *rights* protected. Both apply, in express terms, to any right or privilege secured by the Constitution or laws of the United States.[9] While Section 19 safeguards the rights of citizens only, it protects all and not merely some of their federal rights. Nothing in the broad statutory language, or in the legislative history, supports the view of the court below that Congress intended to limit such protection to only those rights which citizens possess solely because they are citizens and which are possessed only by citizens. The breadth of the rights protected by Section 19 is in no way circumscribed by the fact that Congress restricted the class of persons protected. The only effect of the statutory restriction is that it is necessary to allege and prove that the victim of an offense under Section 19 is a citizen. *Baldwin* v. *Franks,*

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[9] The textual differences are without any significance. Section 19 punishes conspiracies "to injure, oppress, threaten, or intimidate any citizen in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States * * *." Section 20 makes it a crime for a person, under color of law, willfully, to subject "any inhabitant of any State, Territory, or District to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution and laws of the United States. * * *"

120 U. S. 678, 690-691. Mr. Justice Rutledge, in his concurring opinion in the *Screws* case, reviewed the language and history of both sections, and concluded that the rights secured by Sections 19 and 20 are coextensive (325 U. S. at pp. 119, 120):

> Sections 19 and 20 are twin sections in all respects that concern any question of vagueness in defining the crimes. There are important differences. Section 19 strikes at conspiracies, § 20 at substantive offenses. The former protects "citizens," the latter "inhabitants." *There are, however, no differences in the basic rights guarded.* Each protects in a different way the rights and privileges secured to individuals by the Constitution. If one falls for vagueness in pointing to these, the other also must fall for the same reason. If one stands, so must both. It is not one statute therefore which we sustain or nullify. It is two.
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> * * * * * *
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> Section 20 originated in the Civil Rights Act of 1866 (14 Stat. 27), § 19 in the Enforcement Act of 1870 (16 Stat. 141, § 6). Their great original purpose was to strike at discrimination, particularly against Negroes, the one securing civil, the other political rights. But they were not drawn so narrowly. From the beginning § 19 protected all "citizens." § 20 "inhabitants."

At first § 20 secured only rights enumerated in the Civil Rights Act. The first ten years brought it, through broadening changes, to substantially its present form. Only the word "willfully" has been added since then, a change of no materiality, for the statute implied it beforehand. 35 Stat. 1092. The most important change of the first decade replaced the specific enumeration of the Civil Rights Act with the present broad language covering "the deprivation of any rights, privilges, or immunities, secured or protected by the Constitution and laws of the United States." R. S. § 5510. This inclusive designation brought § 20 into conformity with § 19's original coverage of "any right or privilege secured to him by the Constitution or laws of the United States." Since then, under these generic designations, *the two have been literally identical in the scope of the rights they secure. The slight difference in wording cannot be one of substance.* [Emphasis supplied.]

D. *Section 19 has been broadly applied in numerous cases to protect federal rights not possessed solely by citizens as such.* In *United States* v. *Mosley*, 238 U. S. 383, holding that Section 19 protects the right to vote for members of Congress, and to have such vote counted when cast, Mr. Justice Holmes, speaking for the Court, defined the rights

safeguarded by Section 19 in broad, all-embracive terms (p. 387): "this section dealt with Federal rights and with all Federal rights, and protected them in the lump, * * * being devoted, as we have said, to the protection of all Federal rights from conspiracies against them * * *." In *United States* v. *Classic*, 313 U. S. 299, 322, the Court's opinion described the scope of Section 19 as follows: "In unambiguous language it protects 'any right or privilege secured by the Constitution,' a phrase which, as we have seen, extends to the right of the voter to have his vote counted in both the general election and in the primary election, where the latter is a part of the election machinery, as well as to numerous other constitutional rights which are wholly unrelated to the choice of a representative in Congress."[10] The dissenting opinion of Mr. Justice Douglas, in which Mr. Justice Black and Mr. Justice Murphy joined, also recognized that Section 19 "protects every right secured by the Constitution" (p. 331).

In addition to these general statements as to the breadth of the rights secured by Section 19, numerous decisions of this Court and the lower federal courts have applied the section to protect federal

[10] The Court in the *Classic* case also upheld the application of Section 20 to deprivation of the constitutional rights of qualified voters to choose representatives in Congress, the opinion of Mr. Justice Stone stating that the "generality" of that section made it applicable "to deprivations of any constitutional right" (p. 328).

rights which do not flow from the status of citizenship and which in no sense "appertain to citizens as such". Indeed, in none of these cases is it clear that the right was one which is peculiar to citizenship and is possessed only by citizens.

(1) *United States* v. *Waddell,* 112 U. S. 76, held that the right to make a homestead entry on public land, and to continue to reside thereon for the purpose of perfecting title, was protected by Section 19. But this right was not confined to citizens but also extended to aliens who had merely filed declarations of intention to become citizens. R. S. Section 2289, 43 U. S. C. 161. The Court's opinion contains not even the slightest intimation that the word "citizen" in Section 19 has the effect of reducing the general scope of the rights protected, or that any showing must be made that the particular right invoked is one which pertains to citizenship. On the contrary, the Court's opinion at no point referred to the person protected as a "citizen", but merely as one of "a class of persons" (p. 79). See also *Roberts* v. *United States,* 283 Fed. 960 (C. A. 8); *Nixon* v. *United States,* 289 Fed. 177 (C. A. 9), certiorari denied, 263 U. S. 703.

(2) The right to be protected against unlawful violence while in the custody of a United States marshal is also not a right peculiar to citizens, yet this right was enforced under Section 19 in *Logan* v. *United States,* 144 U. S. 263. That the right to

protection while in the lawful custody of a federal officer bears no relation to the status of citizenship was clearly indicated in the opinion (p. 295): "The United States are bound to protect against lawless violence *all persons* in their service or custody in the course of the administration of justice." [Italics added.]

(3) Every person, whether or not he is a citizen, has the right, as well as the duty (see 18 U. S. C. 4), to inform an officer of the United States of a violation of federal law. This right was held to be protected under Section 19 in *Motes* v. *United States*, 178 U. S. 458, and *In re Quarles*, 158 U. S. 532.

(4) The Thirteenth Amendment, which abolishes slavery, is not restricted, of course, to citizens. See *Hodges* v. *United States*, 203 U. S. 1, 17; *Clyatt* v. *United States*, 197 U. S. 207, 218. In fact, the Amendment was ratified and became effective on December 18, 1865, almost three years before the adoption of the Fourteenth Amendment settled the question as to citizenship of the freed Negroes. The right to be free from slavery, involuntary servitude, or peonage is thus a right which belongs to all the people, without regard to citizenship. And this right was held to be embraced within Section 19 in *Smith* v. *United States*, 157 Fed. 721 (C. A. 8), certiorari denied, 208 U. S. 618. See also *Peonage Cases*, 123 Fed. 671, 683 (M. D. Ala.).

(5) The right to furnish munitions, ships and other supplies to the Federal Government for military purposes is likewise a right which does not depend upon or flow from citizenship, yet it was enforced under Section 19 in *Anderson* v. *United States*, 269 Fed. 65 (C. A. 9), certiorari denied, 255 U. S. 576.

(6) Similarly, the right to appear and testify before a federal agency, *Foss* v. *United States*, 266 Fed. 881 (C. A. 9), and

(7) The right to enforce the decree of a federal court by contempt proceedings, *United States* v. *Lancaster*, 44 Fed. 885 (C. C. W. D. Ga.), have been upheld under Section 19, even though such rights are not peculiar to citizens.[11]

It would appear, therefore, that if the court below was right in construing Section 19 as inapplicable to rights which do not "appertain to citizens as such", all of the above cases were wrongly decided.

The right to vote for federal officials is, of course, protected by Section 19. *United States* v. *Classic*, 313 U. S. 299; *United States* v. *Saylor*, 322 U. S. 385; *Guinn* v. *United States*, 238 U. S. 347; *Ex parte Yarbrough*, 110 U. S. 651. The court below regarded this right as a right of citizenship "*spe-*

[11] See also *United States* v. *Cruikshank*, 92 U. S. 542, 552-553, which indicates that the right peaceably to assemble for purposes of petitioning Congress for a redress of grievances is protected by Section 19.

cifically stated in the Constitution" (R. 381). But no provision of the Federal Constitution declares that the right to vote in national elections is an incident of national citizenship. Indeed, the Constitution leaves to the states, subject to the exercise by Congress of its powers, the right to determine qualifications of electors. See Article I, Section 2; *United States* v. *Classic*, 313 U. S. 299, 314-315. Where the applicable state law so provides, an alien meeting the requisite legal qualifications prescribed by the state may exercise the right to vote. See *In re Wehrli*, 157 Fed. 938, 939 (E. D. Ark.); *Spragins* v. *Houghton*, 3 Ill. 377; *State* v. *Covell*, 103 Kan. 754, 175 P. 989; *Livesley* v. *Litchfield*, 47 Ore. 248, 83 P. 142; *Linger* v. *Balfour*, 149 S. W. 795 (Tex. Civ. App.); *People* v. *Scott*, 56 Mich. 154, 22 N. W. 274; *Haywood* v. *Marshall*, 53 Nebr. 220, 73 N. W. 449; *Stewart* v. *Foster*, 2 Binn. 110 (Penna. S. Ct.); *Woodcock* v. *Bolster*, 35 Vt. 632, 638-639. In the *Classic* case the Court's opinion stated that the right to vote for members of Congress is secured by the Constitution "to those citizens *and inhabitants* of the state entitled to exercise the right." (P. 314; italics added.)

Apart from the right to vote for members of Congress, the court below did not refer to any other rights which, on its construction, would be protected by Section 19 because they "appertain to citizens as such" (R. 381). As already indicated, it is doubtful whether even the right to vote is con-

stitutionally restricted to citizens. Other rights have sometimes been characterized as rights of national citizenship (see *Slaughter-House Cases*, 16 Wall. 36, 79-80; *Twining* v. *New Jersey*, 211 U. S. 78, 97-98); e.g., the right to pass freely from state to state, and the right to petition Congress for redress of grievances. But these so-called rights of national citizenship, as was pointed out by Mr. Justice Stone in *Hague* v. *C. I. O.*, 307 U. S. 496, 520 n., are "confined to that limited class of interests growing out of the relationship between the citizen and the national government created by the Constitution and federal laws"; and there is considerable doubt whether these rights are not also secured to persons other than citizens by other provisions of the Constitution, such as the due process and equal protection clauses. See the opinions in *Hague* v. *C. I. O.*, *supra*.

E. *Section 19, as applied to the specific constitutional rights involved in this case, provides a reasonably ascertainable standard of guilt.*—We have shown that the Fourteenth Amendment rights involved in this case are clearly embraced within the general language of Section 19; that its legislative history shows that the section was intended to safeguard the rights newly secured by the Fourteenth Amendment; and that the implied limitation read into the statute by the court below, restricting it to rights flowing from citizenship as such, is in irreconcilable conflict with numerous cases in which

Section 19 has been applied by this Court and the lower federal courts. There remains for consideration the question whether Section 19, as applied to protect the constitutional rights invoked in this case, is unconstitutionally vague and indefinite.

It may be noted, at the outset, that this Court has in several cases flatly stated in unqualified terms that Section 19 is constitutional: *Ex parte Yarbrough,* 110 U. S. 651; *United States* v. *Waddell,* 112 U. S. 76; *Baldwin* v. *Franks,* 120 U. S. 678, 690 ("That this section is constitutional was decided in *Ex parte Yarbrough* * * * and *United States* v. *Waddell* * * *"); *Logan* v. *United States,* 144 U. S. 263; *Motes* v. *United States,* 178 U. S. 458, 462 ("No question has been made—indeed none could successfully be made—as to the constitutionality of these statutory provisions"); *United States* v. *Mosley,* 238 U. S. 383, 386 ("It is not open to question that this statute is constitutional, and constitutionally extends some protection at least to the right to vote for Members of Congress"); *United States* v. *Classic,* 313 U. S. 299, 321 ("the Court [in the *Yarbrough* and *Mosley* cases] found no uncertainty or ambiguity in the statutory language, obviously devised to protect the citizen 'in the free exercise or enjoyment of any right or privilege secured to him by the Constitution' ").

The constitutional rights involved in this case, as charged in the indictment (R. 1-7) and as stated

by the trial court in its instructions to the jury (R. 316-319), are as follows: (1) The right not to be deprived of liberty without due process of law; (2) the right to be secure in one's person while in the custody of the state; (3) the right not to be punished without due process of law; (4) the right to be immune, while in the custody of persons acting under color of the laws of the state, from illegal assault and battery by any person exercising the authority of the state; and (5) the right to be tried by due process of law and if found guilty to be sentenced and punished in accordance with the laws of the state. The court instructed the jury that each of these rights was secured by the Fourteenth Amendment and was within the protection of Section 19. (R. 318.)

There can be no doubt that these rights have been made specific and definite by judicial decisions. See *Chambers* v. *Florida*, 309 U. S. 227, 236-237, 240; *Brown* v. *Mississippi*, 297 U. S. 278; *Powell* v. *Alabama*, 287 U. S. 45; *Moore* v. *Dempsey*, 261 U. S. 86; *Meyer* v. *Nebraska*, 262 U. S. 390, 399; *Civil Rights Cases*, 109 U. S. 3, 23-24; *Hurtado* v. *California*, 110 U. S. 516; *Holden* v. *Hardy*, 169 U. S. 366; *Bute* v. *Illinois*, 333 U. S. 640; *Strauder* v. *West Virginia*, 100 U. S. 303, 310; *Watts* v. *Indiana*, 338 U. S. 49, 55; *Turner* v. *Pennsylvania*, 338 U. S. 62; *Harris* v. *South Carolina*, 338 U. S. 68; and *Johnson* v. *Pennsylvania*, 340 U. S. 881.

In *Chambers* v. *Florida, supra,* at 236-237, the Court said:

> From the popular hatred and abhorrence of illegal confinement, torture and extortion of confessions of violations of the "law of the land" evolved the fundamental idea that no man's life, liberty or property be forfeited as criminal punishment for violation of that law until there had been a charge fairly made and fairly tried in a public tribunal free of prejudice, passion, excitement, and tyrannical power. Thus, as assurance against ancient evils, our country, in order to preserve "the blessings of liberty," wrote into its basic law the requirement, among others, that the forfeiture of the lives, liberties or property of people accused of crime can only follow if procedural safeguards of due process have been obeyed.

The constitutional rights involved in this case are substantially the same as those involved in the *Screws* case. See 325 U. S. 91, 93. The opinion of Mr. Justice Douglas in that case clearly indicated that these rights are sufficiently specific and definite to provide an ascertainable standard of guilt[12] (p. 106):

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[12] Mr. Justice Douglas and the other Justices who joined with him held that the case had to be remanded for a new trial only because the question of "specific intent" had not

> * * * it is plain that basic to the concept of due process of law in a criminal case is a trial—a trial in a court of law, not a "trial by ordeal." *Brown* v. *Mississippi*, 297 U. S. 278, 285 * * *. Those who decide to take the law into their own hands and act as prosecutor, jury, judge, and executioner plainly act to deprive a prisoner of the trial which due process of law guarantees him.

The Fourteenth Amendment rights involved in this case were also involved in each of the following cases arising under Section 20, and were held sufficiently definite to be protected by the statute: *Catlette* v. *United States*, 132 F. 2d 902 (C. A. 4); *Culp* v. *United States*, 131 F. 2d 93 (C. A. 8); *Crews* v. *United States*, 160 F. 2d 746 (C. A. 5); *United States* v. *Trierweiler*, 52 F. Supp. 4 (E. D. Ill.); *United States* v. *Sutherland*, 37 F. Supp. 344 (N. D. Ga.); *Williams* v. *United States*, 179 F. 2d 656 (C. A. 5), certiorari granted, October 16, 1950, No. 365.

These Fourteenth Amendment rights are no less specific or definite than any of the other rights which have been held by this Court and the lower federal courts to be included within Section 19.

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properly been submitted to the jury. 325 U. S. at 106-107. If the jury had, in their view, been correctly charged on the issue of intent, presumably Mr. Justice Douglas and his colleagues would have agreed with Justices Rutledge and Murphy that the judgment should be affirmed.

Thus, in *Logan* v. *United States,* 144 U. S. 263, 294, the statute was held valid as applied to the right to be protected against violations while in the lawful custody of a federal officer—a right which the Court stated "does not depend upon any of the Amendments to the Constitution, but arises out of the creation and establishment by the Constitution itself of a national government, paramount and supreme within its sphere of action." Similarly, although no specific provision of law could be cited as fixing the right, the Court in *In re Quarles,* 158 U. S. 532, held that it is the right of every citizen of the United States to inform a federal officer of a violation of the laws, and that this right is secured by the Constitution and is included within Section 19. The Court's opinion stated (p. 536):

> The right of a citizen informing of a violation of law, like the right of a prisoner in custody upon a charge of such violation, to be protected against lawless violence, does not depend upon any of the Amendments to the Constitution, but arises out of the creation and establishment by the Constitution itself of a national government, paramount and supreme within its sphere of action. *United States* v. *Logan,* 144 U. S. 294. Both are, within the concise definition of the Chief Justice in an earlier case, "privileges and immunities arising out of the nature and essential character of the national government, and

granted or secured by the Constitution of the United States." *In re Kemmler*, 136 U. S. 436, 448.

See also *Motes* v. *United States*, 178 U. S. 458, 462-463; *Nicholson* v. *United States*, 79 F. 2d 387 (C. A. 8).

In *United States* v. *Cruikshank*, 92 U. S. 542, 552, the Court said that the "right of the people peaceably to assemble for the purpose of petitioning Congress for a redress of grievances, or for anything else connected with the powers or the duties of the national government" is protected by Section 19, even though no specific provision in the Constitution or laws of the United States expressly created such right.[13] The source of the right was stated as follows: "The very idea of a government, republican in form, implies a right on the part of its citizens to meet peaceably for consultation in respect to public affairs and to petition for a redress of grievances." See also *Powe* v. *United States*, 109 F. 2d 147, 151 (C. A. 5), certiorari denied, 309 U. S. 679.

The right to furnish military supplies to the federal government for defense purposes (*Anderson* v. *United States*, 269 Fed. 65 (C. A. 9), certiorari

[13] The *Cruikshank* case was decided in 1876, long before this Court held that the rights secured by the First Amendment were by virtue of the Fourteenth Amendment protected against abridgment by the states.

denied, 255 U. S. 576), the right to appear before a federal land office and testify on behalf of contestants in cases involving lands entered under the Homestead Acts (*Foss* v. *United States,* 266 Fed. 881 (C. A. 9)), and the right to enforce a decree of a federal court by contempt proceedings (*United States* v. *Lancaster,* 44 Fed. 885, 44 Fed. 896 (C. C. W. D. Ga.)) are not, of course, rights which are specifically declared in any provision of the Constitution or laws. The existence of each is implied by general provisions of law. The rights secured by the Fourteenth Amendment, however, are far more specific, especially as construed and applied by this Court through the years. As has already been indicated (pp. 46-48, *supra*), it is far from clear what rights, if any "appertain to citizens as such." Consequently, the construction of Section 19 adopted by the court below cannot be said to have the merit of giving the statute any greater definiteness or specificity than if it were construed to protect the Fourteenth Amendment rights here involved.

This Court in *Winters* v. *New York,* 333 U. S. 507, 518, acknowledged difficulties inherent in determining when a criminal statute is so vague "that men of common intelligence must necessarily guess at its meaning".

The question being essentially one of due process of law, the ultimate inquiry is whether the statute "gives a person acting with reference to the statute fair warning that his conduct is within its prohibition."[14] Thus, the provision of the Lea Act, Sec. 506(a)(1) of the Communications Act of 1934, as amended by the Act of April 16, 1946, 60 Stat. 89, making it unlawful for anyone "willfully" to coerce radio licensees "to employ or agree to employ * * * persons in excess of the number of employees needed by such licensee to perform actual services," was held sufficiently definite in *United States* v. *Petrillo*, 332 U. S. 1, 7, the Court stating:

> We think that the language Congress used provides an adequate warning as to what conduct falls under its ban, and marks boundaries sufficiently distinct for judges and juries fairly to administer the law in accordance with the will of Congress. That there may be marginal cases in which it is difficult to determine the side of the line on which a particular fact situation falls is no sufficient reason to hold the language too ambiguous to define a criminal offense. *Robinson* v. *United States*, 324 U. S. 282, 285-286.

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[14] *Screws* v. *United States*, 325 U. S. at 104 (opinion of Douglas J.).

Where the statute requires *scienter,* or specific intent, that is, "where the punishment imposed is only for an act knowingly done with the purpose of doing that which the statute prohibits, the accused cannot be said to suffer from lack of warning or knowledge that the act which he does is a violation of law. The requirement that the act must be willful or purposeful * * * does relieve the statute of the objection that it punishes without warning an offense of which the accused was unaware." Mr. Justice Douglas in *Screws* v. *United States,* 325 U. S. at 101-102. Thus, in *Gorin* v. *United States,* 312 U. S. 19, 28, construing provisions of the Espionage Act of 1917, 40 Stat. 217, the Court held valid the provisions in question in view of their requirements that those prosecuted thereunder have acted in bad faith and with *scienter.* See also *Omaechevarria* v. *Idaho,* 246 U. S. 343, 348;[15] *Hygrade Provision Co.* v. *Sherman,* 266 U. S. 497, 502-503;[16] and cases cited in *Gorin* v. *United States,* 312 U. S. at 27. Cf. *United States* v. *Cohen Grocery Co.,* 255 U. S. 81;[17] *Hern-*

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[15] The Court noted that "any danger to sheepmen which might otherwise arise from indefiniteness, is removed by Sec. 6314 of Revised Codes, which provides that: 'In every crime or public offense there must exist a union, or joint operation, of act and intent, or criminal negligence.'" (246 U. S. at 348.)

[16] The statute in question required "a specific intent to defraud." (266 U. S. at 502-503.)

don v. *Lowry*, 301 U. S. 242, 262,[18] where the statutes held invalid did not require wilfulness or specific intent.

Following these principles, this Court in *American Communications Association* v. *Douds*, 339 U. S. 382, 413, said that "the constitutional vice in a vague or indefinite statute is the injustice to the accused in placing him on trial for an offense, the nature of which he is given no fair warning." The Court stated, however, that "the fact that punishment is restricted to acts done with knowledge that they contravene the statute makes this objection untenable," and that—

> As this Court pointed out in *United States* v. *Ragen*, 314 U. S. 513, 524 (1942), "A mind intent upon willful evasion is inconsistent with surprised innocence." Cf. * * * *Screws* v. *United States* * * *. [339 U. S. at 413.]

Section 19 is a conspiracy statute, providing that if "two or more persons conspire to injure" any citizen "in the free exercise or enjoyment of any

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[17] See the full text of the statute set forth at 255 U. S. 81-82, note 1. The word "wilfully" in the statute apparently did not apply to the provision under attack, and the Court did not construe the statute as having such effect. Cf. p. 89.

[18] The Court construed the statute to punish utterance of words which "might, at some time in the indefinite future" lead to force and violence, and it therefore assumed that the statute applied to a person "however peaceful his own intent." (301 U. S. at 262-263.)

right or privilege secured to him by the Constitution," they shall be punished. The gist of the crime is conspiracy, an unlawful combination or agreement formed for criminal purposes. *Pettibone* v. *United States,* 148 U. S. 197, 203, 207; *Duplex Co.* v. *Deering,* 254 U. S. 443, 465; see, generally, Sayre, *Criminal Conspiracy,* 35 Harv. L. Rev. 393. A conspiracy necessarily implies a meeting of minds for a deliberate purpose, i.e., the effectuation of a criminal agreement or course of action. "A conspiracy is a partnership in crime." *Pinkerton* v. *United States,* 328 U. S. 640, 644. An "intent to accomplish an object cannot be alleged more clearly than by stating that parties conspired to accomplish it." *Frohwerk* v. *United States,* 249 U. S. 204, 209; cf. *United States* v. *Falcone,* 311 U. S. 205, 210; *Morrison* v. *California,* 291 U. S. 82, 92; *Truax* v. *Corrigan,* 257 U. S. 312, 327.

Its inherent requirement of proof of conspiracy justifies construction of Section 19 as requiring the intent which was found sufficient in the *Screws* case to save Section 20 from the charge of vagueness: the specific intent "to deprive a person of a right which has been made specific either by the express terms of the Constitution or laws of the United States or by decisions interpreting them" (325 U. S. at 104). Mr. Justice Douglas' opinion stated (pp. 103-104):

> * * * We repeat that the presence of a bad purpose or evil intent alone may not be sufficient. We do say that a requirement of a spe-

> cific intent to deprive a person of a federal right made definite by decision or other rule of law saves the Act from any charge of unconstitutionality on the grounds of vagueness.
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> Once the section is given that construction, we think that the claim that the section lacks an ascertainable standard of guilt must fail. The constitutional requirement that a criminal statute be definite serves a high function. It gives a person acting with reference to the statute fair warning that his conduct is within its prohibition. This requirement is met when a statute prohibits only "willful" acts in the sense we have explained. One who does act with such specific intent is aware that what he does is precisely that which the statute forbids.

Mr. Justice Rutledge, speaking of Section 19 as well as Section 20 in his concurring opinion in the *Screws* case (325 U. S. at 128-129) said:

> Moreover, statutory specificity has two purposes, to give due notice that an act has been made criminal before it is done and to inform one accused of the nature of the offense charged, so that he may adequately prepare and make his defense. More than this certainly the Constitution does not require. Cf. Amend. VI. All difficulty on the latter score vanishes, under § 20, with the indictment's

particularization of the rights infringed and the acts infringing them. If it is not sufficient in either respect, in these as in other cases the motion to quash or one for a bill of particulars is at the defendant's disposal. The decided cases demonstrate that accused persons have had little or no difficulty to ascertain the rights they have been charged with transgressing or the acts of transgression. So it was with the defendants in this case. They were not puzzled to know for what they were indicted, as their proof and their defense upon the law conclusively show. They simply misconceived that the victim had no federal rights and that what they had done was not a crime within the federal power to penalize. That kind of error relieves no one from penalty.

In the other aspect of specificity, two answers, apart from experience, suffice. One is that § 20, and § 19, are no more general and vague, Fourteenth Amendment rights included, than other criminal statutes commonly enforced against this objection. The Sherman Act is the most obvious illustration.

Furthermore, the argument of vagueness, to warn men of their conduct, ignores the nature of the criminal act itself and the notice necessarily given from this. Section 20 strikes only at abuse of official functions by state officers. It does not reach out for crimes done

by men in general. Not murder per se, but murder by state officers in the course of official conduct and done with the aid of state power, is outlawed. These facts, inherent in the crime, give all the warning constitutionally required. For one, so situated, who goes so far in misconduct can have no excuse of innocence or ignorance.

Generally state officials know something of the individual's basic legal rights. If they do not, they should, for they assume that duty when they assume their office. Ignorance of the law is no excuse for men in general. It is less an excuse for men whose special duty is to apply it, and therefore to know and observe it. If their knowledge is not comprehensive, state officials know or should know when they pass the limits of their authority, so far at any rate that their action exceeds honest error of judgment and amounts to abuse of their office and its function.

In view of (1) the construction placed on Section 20 in the *Screws* case, (2) the obvious fact that one cannot conspire to deprive a citizen of his federal rights without intending such deprivation; and (3) the presence in Section 19, in its original form as enacted in 1870, of an express requirement of such an intent, and the absence of any indication in the subsequent legislative history of that Congress ever intended to eliminate intent as a neces-

sary element of the conspiracy offense (see discussion, *supra*, pp. 32-39), we submit that Section 19 should be construed in the same manner as Section 20 was in the *Screws* case, and that as so construed, the statute is sufficiently certain and definite.[19]

Section 19 could not be more specific and yet serve its great purpose of protecting *all* constitutional rights, comprehensively and without qualification (*United States* v. *Mosley*, 238 U. S. 383, 387).[19] As is also true of Section 20, the comprehensiveness of Section 19 is not comparable to the statute held invalid in *United States* v. *Cohen Grocery Co.*, 255 U. S. 81, 89, which left open "the widest conceivable inquiry, the scope of which no one can foresee and the result of which no one can foreshadow or adequately guard against * * *" and which "to attempt to enforce * * * would be the exact equivalent of an effort to carry out a statute which in terms merely penalized and punished all acts detrimental to the public interest when unjust and unreasonable in the estimation of the

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[19] The Court has recognized that the ideal of complete specificity must yield to the practical requirements of legislation. In *Miller* v. *Strahl*, 239 U. S. 426, 434, for example, it said:

> Rules of conduct must necessarily be expressed in general terms and depend for their application upon circumstances, and circumstances vary.

See also, *Bandini Co.* v. *Superior Court*, 284 U. S. 8, 18; *Miller* v. *Oregon*, 273 U. S. 657, discussed in *Cline* v. *Frink Dairy Co.*, 274 U. S. 445, at 464-465.

court and jury." Congress, when it enacted Section 19, as well as Section 20, did not attempt to catalogue every federal right in order to protect all the rights secured by the Constitution. The possibility that in circumstances not here presented there may be difficulty in determining whether there has been such a deprivation of constitutional right as to come within the penalties of Section 19 is no reason for doubting the validity of the statute in cases where its applicability is clear. The enforcement of almost every statute involves an inevitable fringe of uncertainty and doubt: "* * * the law is full of instances where a man's fate depends upon his estimating rightly, that is, as the jury subsequently estimates it, some matter of degree." *Nash* v. *United States*, 229 U. S. 373, 377. "Whenever the law draws a line there will be cases very near each other on opposite sides." *United States* v. *Wurzbach*, 280 U. S. 396, 399.

II

The Trial Court Correctly Instructed the Jury as to the Specific Intent Required

The trial court did not err in its charge to the jury in any respect; the instructions covered every phase of the case and included proper instructions as to the meaning of conspiracy and its elements (R. 319-321, 325, 326, 328, 330); as to the nature of the constitutional rights involved (R. 317-319, 321-322); and as to the statute involved (R. 317-

319, 322). As shown below, the charge fully covered the element of specific intent required under Section 19.

The trial judge instructed the jury (R. 320) that—

> While the parties to a conspiracy, if there is one, should be working together understandingly, this does not mean that they would understand that what they were doing would be a violation of law. All that is necessary is that they should understand what they are doing. If what they thus understandingly cooperate to do is a violation of law, in this case a deprivation of constitutional rights, then the conspiracy will have been established, even though the participants did not know that what they were doing would in fact be deemed to have been a deprivation or violation of any person's constitutional rights.

Instructions to a jury must be read and interpreted in their entirety, and the trial judge correctly told the jury in this case that in considering any one instruction, they "must construe it in the light of and in harmony with every other instruction given, and so considering and so construing apply the principles in it enunciated to all the evidence admitted upon the trial." (R. 332.) The above instruction, which was criticized by the court of appeals, was but one of several prelimi-

nary instructions of a general nature and was obviously designed to inform the jury of the nature and elements of a criminal conspiracy (R. 319-321). When the trial judge dealt specifically with the element of intent later in his charge, he carefully instructed the jury that (R. 322-323):

> In order to convict under this indictment, it is necessary for the jury to find that the defendants had in mind the specific purpose of depriving the complaining witnesses of those rights guaranteed them under the Fourteenth Amendment to the Constitution of the United States, which are enumerated in the indictment, while acting under color of the laws of the State of Florida.[20]
>
> The proof, if any, of a general intent to do the complaining witnesses a wrong is not sufficient, but a specific intent to deprive them of a Constitutional right, as the object of the conspiracy, if any, is a burden the law casts upon the Government. In considering whether the defendants had such specific intent, you may take into consideration all the circumstances of the case in the light of the evidence as it has been developed.
>
> * * *

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[20] The rights, guaranteed under the Fourteenth Amendment, enumerated in the indictment were listed and explained to the jury earlier in the charge (R. 317-319, 321-322).

> Neither color of law nor specific intent may be presumed by you gentlemen of the jury, but both color of law and specific intent must be proven by the Government beyond a reasonable doubt.

This instruction was reiterated in the same or similar language five times in the remainder of the charge (R. 323, 327-330). For example, at R. 327:

> I wish to make it clear to you that in order to be entitled to a conviction the Government must prove beyond and to the exclusion of a reasonable doubt not merely that a conspiracy existed but that a conspiracy existed having for its object the object charged in the indictment, that is to injure, oppress, threaten or intimidate Purnell * * * in the exercise and enjoyment of rights and privileges secured to them by the Fourteenth Amendment * * *.

At R. 328 the court charged the jury as follows:

> The gist of the charge of conspiracy is the intent. It is not sufficient for the Government to show that the defendants, or any of them, had a bad motive or intent. The Government must show that the defendants, or at least two of them, entered into a plan and scheme to specifically deprive either Robinson, Sturniolo, Priest or Purnell of their constitutional rights as charged in the indictment. If

you find from the evidence that it was not the defendants' specific intent to deprive the complaining witnesses of their constitutional rights, even though they did not act as ordinary prudent persons would have acted, then you must find the defendants not guilty.

* * * * *

* * * You must, in order to convict these defendants, find to the exclusion and beyond a reasonable doubt that there was an intent to deprive the complaining witnesses of a specific constitutional right, and that right must be one of the five enumerated and set out in the indictment.

The same instruction was again given, almost *in haec verba,* at R. 329.

These instructions carefully paraphrased the language of the opinion of Mr. Justice Douglas in the *Screws* case defining the specific intent required under Section 20 (325 U. S. at 104, 106):

* * * *

One who does act with such specific intent is aware that what he does is precisely that which the statute forbids. He is under no necessity of guessing whether the statute applies to him * * * for he either knows or acts in reckless disregard of its prohibition of the deprivation of a defined constitutional or other federal right. [p. 104]

* * * *

* * * He who defies a decision interpreting the Constitution knows precisely what he is doing. If sane, he hardly may be heard to say that he knew not what he did. Of course, willful conduct cannot make definite that which is undefined. But willful violators of constitutional requirements, which have been defined, certainly are in no position to say that they had no adequate advance notice that they would be visited with punishment. When they act willfully in the sense in which we use the word, they act in open defiance or in reckless disregard of a constitutional requirement which has been made specific and definite. When they are convicted for so acting, they are not punished for violating an unknowable something. [pp. 104-105]

* * * * *

* * * The fact that the defendants may not have been thinking in constitutional terms is not material where their aim was not to enforce local law but to deprive a citizen of a right and that right was protected by the Constitution. When they so act they at least act in reckless disregard of constitutional prohibitions or guarantees. * * *

Those who decide to take the law into their own hands and act as prosecutor, jury, judge, and executioner plainly act to deprive a prisoner of the trial which due process of law guarantees him. And such a purpose need

not be expressed; it may at times be reasonably inferred from all the circumstances attendant on the act. [p. 106]

Where, as here, the constitutional rights involved have been made specific and definite by judicial decisions, and where, further, the defendants have deliberately taken the law into their own hands by carrying out a "third degree" inquisition, the opinion of Mr. Justice Douglas in *Screws* does not require the jury to find that the defendants were "thinking in constitutional terms." In such a case the requisite "specific intent" can be inferred from all the circumstances showing that the defendants were aware that they were acting outside the law, in reckless disregard of their victims' constitutional rights. Read as a whole, the charge given here represents a conscientious, and we believe entirely correct, effort on the part of the trial court to comport faithfully to the construction placed on Section 20 by the opinion of Mr. Justice Douglas in the *Screws* case.

Concededly, the trial court in this case did not use the word "willful" in the charge. But Section 19 does not contain that word, which is hardly a term of art. As this Court pointed out in *Spies* v. *United States*, 317 U. S. 492, 497, "willful" is a word "of many meanings, its construction often being influenced by its context." If, as has been assumed, Section 19 requires the jury to find "specific intent" in order to convict, the charge here cannot successfully be challenged on the ground

that the court failed to make this clear to the jury. As already shown (p. 66, *supra*), the court's charge was more favorable to the defendants than the *Screws* case requires: The jury were instructed that in order to convict, they must find that "the defendants had in mind the specific purpose of depriving the complaining witnesses" of the specific constitutional rights enumerated in the indictment (R. 322). No useful purpose could have been served if the trial court had expressly referred to the word "willful"; indeed, it might only have created needless confusion in the minds of the jurors.

III

The Trial Court Did Not Err in Refusing to Admit Evidence Concerning the Previous Acquittals of Respondents Ford, Bombaci, and Perry on the Charges Under Section 20

The court below held that for the "evidentiary purpose" of aiding respondents Ford, Bombaci and Perry to rebut the charge of conspiracy, the trial court should have admitted into evidence the record and the charge in the trial on the indictment of November 15, 1948, resulting in the conviction of only Williams and the acquittal of the other respondents on the substantive offenses charged under Section 20. The court stated that "The adjudication that only Williams did the wrong [and] the others did not counsel, aid or abet him in doing it, would be very helpful to these others in rebutting the inference that there was a previous conspiracy * * *" (R. 384-385).

At the present trial, the respondents who previously had been acquitted on the Section 20 charge urged that their acquittal was *res judicata* as to the conspiracy charges. The trial court correctly rejected this contention (R. 19, 22, 42-44, 72, 75, 76, 80-81). At the end of the Government's case, these defendants offered in support of motions for acquittal the indictment, the charge to the jury, and the verdict in the earlier case (R. 252, 254). The motions were properly denied (R. 257).

The court below correctly held that "there was no former jeopardy or former acquittal which would *bar a trial* of the conspiracy counts in the present indictment. A former jeopardy or an acquittal to be thus effective must be of the *same offense,* and it is well established that a conspiracy to do an unlawful act is not the same offense as the doing of it." (R. 383-384.) But the court erred in holding that the prior acquittals should have been admitted as evidence for the jury's consideration (R. 385).

It is clear that *res judicata* is a plea in bar addressed to the court. Such a plea presents a legal question as to what was determined by a prior verdict, and thus raises no issues of fact to be submitted to the jury. See *Sealfon* v. *United States,* 332 U. S. 575, 579; *United States* v. *Oppenheimer,* 242 U. S. 85; and see Brief for the United States in No. 209, *Emich Motors Corp.* v. *General Motors Corp.*, now pending before this Court, pp. 28-29.

The court below erred in holding that the previous acquittals on the substantive charges should have been admitted in evidence for the jury with respect to the conspiracy charges against the respondents other than Williams. The commission of a substantive crime and a conspiracy to commit it are distinct offenses. *Nye & Nissen* v. *United States,* 336 U. S. 613, 618-620; *Sealfon* v. *United States, supra; Pinkerton* v. *United States,* 328 U. S. 640, 643. A verdict of a jury in a prior prosecution that the defendants were not guilty of substantive offenses charged, or even of aiding and abetting the commission of those offenses, would not necessarily determine that they did not conspire among themselves and with other defendants to commit the offenses.[21] The verdict would, at most, be only a determination that they did not commit or aid and abet the commission of the acts which were the objects of the conspiracy. Of course, as in the *Sealfon* case, where there is a complete identity of evidence upon which guilt either of aiding and abetting or of conspiracy necessarily

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[21] See *Westfall* v. *United States,* 20 F. 2d 604, 607 (C. A. 6):

"* * * a conspiracy to commit a crime is a different offense from the crime that is the object of the conspiracy, and if conspirators who have joined in the actual commission of crime are separately punishable for both the conspiracy and the substantive offense, the fact that one of such conspirators and principals in the substantive offense was incapable of independently committing such substantive offense cannot avoid the application of the established doctrine."

depended, *res judicata* may be a defense in a second prosecution.

The *Sealfon* case, however, is clearly distinguishable. In that case, the petitioner was acquitted on a charge of conspiracy to defraud the United States by presenting false invoices and making false representations to a ration board that certain sales of sugar products were made to exempt agencies. He was thereafter tried and convicted for having aided and abetted another defendant in uttering and publishing as true the false invoices introduced in the first trial. The petitioner was the only one on trial in the conspiracy case, and there was no evidence to connect him directly with anyone other than one Greenberg. "Only if an agreement with at least Greenberg was inferred by the jury could petitioner be convicted" (332 U. S. at 579), and the jury were instructed that Sealfon must be acquitted if there was reasonable doubt that he conspired with Greenberg. The essence of the case against the petitioner was a letter he had written to Greenberg which allegedly constituted the link between the two. The Court held (p. 580) that since the petitioner had been acquitted for conspiracy based upon evidence that he wrote the letter pursuant to an agreement with Greenberg, the only evidence introduced at the second trial to establish aiding and abetting, he could not be convicted at the second trial on the same facts for the same alleged agreement. "It was a

second attempt to prove the agreement which at each trial was crucial to the prosecution's case and which was necessarily adjudicated in the former trial to be non-existent. That the prosecution may not do."

In the *Sealfon* case, therefore, there was not only an identity of proof on the two charges, but the jury's acquittal of the first offense necessarily constituted a rejection of the only evidence presented at the second trial and upon which conviction of the second offense depended. This was not true here. The acquittals of Ford, Bombaci, and Perry on the substantive charges did not necessarily establish that the jury rejected or disbelieved *all* of the evidence adduced by the Government against them. As was said in *Nye & Nissen* v. *United States, supra,* at 620, the substantive offense of aiding and abetting "has a broader application" than that of conspiracy. The jury in the Section 20 case may have acquitted the other respondents, and convicted only Williams, because they thought that the former were not acting under color of law when they had engaged in the activities at the shack; or that they had not acted wilfully; or that they had not actually struck any witness; or that they had not aided Williams in committing the substantive offense.

The verdict did not establish that these other respondents were not present at the shack, or that they had not previously conspired or agreed to

carry out the plan to compel the witnesses to confess to having committed crimes or to furnish information concerning such crimes. See *United States* v. *Adams*, 281 U. S. 202; *De Sollar* v. *Hanscome*, 158 U. S. 216, 220-221. Since there may have been several different grounds for the acquittals, it is fruitless to speculate as to which possible basis the jury relied upon in reaching its conclusion. See *Washington, Alexandria & Georgetown Steam Packet Co.* v. *Sickles*, 24 How. 333, 344-345; 5 Wall. 580, 593.

CONCLUSION

For the reasons stated, it is respectfully submitted that the judgment below should be reversed.

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December 1950.

☆ U.S. GOVERNMENT PRINTING OFFICE 1950—920501/P.O. 396

In the Supreme Court of the United States

OCTOBER TERM, 1950

No. 26

UNITED STATES OF AMERICA, PETITIONER

v.

JAY G. WILLIAMS, CHARLES R. FORD, JOHN S. BOMBACI, AND JOSEPH V. PERRY

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

REPLY BRIEF FOR THE UNITED STATES

I

Respondents' brief admits (p. 8) that the "Government's evidence was sufficient to show that the defendants employed third-degree methods, and there was no evidence offered in denial of this." They argue, however (pp. 13, 26-27), that:

> Third-degree methods have been openly employed by police departments in various sections of the country for years. * * *
>
> * * * * * *
>
> The fact that such police methods have been employed for years by numerous po-

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lice departments in various sections of the country is no secret. It is generally known. It would have been known by the defendants. It is and has been known to this Court by reason of the numerous cases involving confessions obtained by such methods which are presented to the Supreme Court.

Surely the Department of Justice has known for many years that third-degree methods have been employed.

The enforcement officers of the Government enjoy an enviable reputation for their perseverance, thoroughness, and success in detecting the commission of federal offenses and in bringing the perpetrators to justice. Such a reputation would not be unknown to the defendants below. And yet, we fail to find where the Government has attempted to utilize the provisions of Section 19 to punish police officers for employing third-degree methods up to the time of the present case except in the Screws case * * *.

Would not the fact that such practices have gone unnoticed by the officers charged with enforcement for some seventy-five years be reason enough for an ordinarily prudent man to believe that the employment of third-degree police methods does not constitute an offense under this section?

This argument is based on a misconception of the intent or state of mind required for guilt under Sections 19 and 20. As was shown in our

main brief (pp. 49–52), and is more fully developed herein, the use of third-degree methods by police officers acting in the pursuit of their duties is, in and of itself, a denial of due process of law; and this Court in numerous cases has so stated, in specific, express terms. An officer who deliberately employs such inquisitorial methods in violation of rights which this Court has held to be secured by the due process clause of the Fourteenth Amendment gains no immunity from prosecution under Sections 19 and 20 because he mistakenly believes that no action will be taken against him. Mr. Justice Douglas' opinion in the Screws case (325 U. S. 91, 105) gives the incisive answer to respondents' contention:

> * * * willful violators of constitutional requirements, which have been defined, certainly are in no position to say that they had no adequate advance notice that they would be visited with punishment. When they act willfully in the sense in which we use the word, they act in open defiance or in reckless disregard of a constitutional requirement which has been made specific and definite. When they are convicted for so acting, they are not punished for violating an unknowable something.[1]

[1] "* * * Section 20 strikes only at abuse of official functions by state officers. It does not reach out for crimes done by men in general. Not murder per se, but murder by state officers in the course of official conduct and done with the aid of state power, is outlawed. These facts, inherent in the crime, give all the warning constitutionally required. For

This Court has left no doubt that "implicit in the concept of ordered liberty", and hence secured by the Fourteenth Amendment (*Palko* v. *Connecticut,* 302 U. S. 319, 325; *Wolf* v. *Colorado,* 338 U. S. 25, 26–27), is the right of persons accused of crime to be tried and punished fairly and according to law, and not by third-degree methods. "Because a State may dispense with a jury trial, it does not follow that it may substitute trial by ordeal. The rack and torture chamber may not be substituted for the witness stand." *Brown* v. *Mississippi,* 297 U. S. 278, 285–286.

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one, so situated, who goes so far in misconduct can have no excuse of innocence or ignorance.

"Generally state officials know something of the individual's basic legal rights. If they do not, they should, for they assume that duty when they assume their office. Ignorance of the law is no excuse for men in general. It is less an excuse for men whose special duty is to apply it, and therefore to know and observe it." (Mr. Justice Rutledge, p. 129.)

"* * * Knowledge of a comprehensive law library is unnecessary for officers of the law to know that the right to murder individuals in the course of their duties is unrecognized in this nation. No appreciable amount of intelligence or conjecture on the part of the lowliest state official is needed for him to realize that fact; nor should it surprise him to find out that the Constitution protects persons from his reckless disregard of human life and that statutes punish him therefor. To subject a state official to punishment under § 20 for such acts is not to penalize him without fair and definite warning. Rather it is to uphold elementary standards of decency and to make American principles of law and our constitutional guarantees mean something more than pious rhetoric." (Mr. Justice Murphy, pp. 136–137.)

The decisions of this Court holding that the Fourteenth Amendment forbids admission in evidence against a defendant of a confession extorted from him by compulsion, physical or mental, do not rest on any narrow ground that such evidence lacks probative value. The Court in these cases was not establishing a mere rule of evidence. As the opinions clearly show, these cases are based rather upon application of a first principle of constitutional law, namely, that due process of law requires that "state action, whether through one agency or another, shall be consistent with the fundamental principles of liberty and justice which lie at the base of all our civil and political institutions." *Hebert* v. *Louisiana*, 272 U. S. 312, 316; and see *Snyder* v. *Massachusetts*, 291 U. S. 97, 105. Confessions obtained by methods which are fundamentally unfair and "revolting to the sense of justice" (*Brown* v. *Mississippi, supra*, at 286) are *ipso facto* inadmissible in evidence, regardless of their "voluntariness". The Court's opinions have established that due process forbids not merely the use in evidence of confessions coerced by brutal police methods; it forbids such coercion in and of itself. The *Palko* opinion recognized (p. 326) that ordered liberty implies "the need to give protection against torture, physical or mental."

In *Chambers* v. *Florida*, 309 U. S. 227, 240–241, the Court said:

> We are not impressed by the argument that law enforcement methods such as those under review are necessary to uphold our laws. The Constitution proscribes such lawless means irrespective of the end.

In *Haley* v. *Ohio*, 332 U. S. 596, 599, 601, Mr. Justice Douglas stated:

> We do not think the methods used in obtaining this confession can be squared with that due process of law which the Fourteenth Amendment commands.
>
> * * * * *
>
> * * * this was a confession wrung from a child by means which the law should not sanction. Neither man nor child can be allowed to stand condemned by methods which flout constitutional requirements of due process of law.
>
> * * * Formulas of respect for constitutional safeguards cannot prevail over the facts of life which contradict them. They may not become a cloak for inquisitorial practices and make an empty form of the due process of law for which free men fought and died to obtain.
>
> * * * The Fourteenth Amendment prohibits the police from using the private, secret custody of either man or child as a device for wringing confessions from them.

In that case Mr. Justice Frankfurter wrote in his concurring opinion as follows (pp. 603–604, 605–606):

> * * * it cannot be too often repeated that the limitations which the Due Process Clause of the Fourteenth Amendment placed upon the methods by which the States may prosecute for crime cannot be more narrowly conceived. This Court must give the freest possible scope to States in the choice of their methods of criminal procedure. But these procedures cannot include methods that may fairly be deemed to be in conflict with deeply rooted feelings of the community. * * *
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> * * * * * *
>
> * * * An impressive series of cases in this and other courts admonishes of the temptations to abuse of police endeavors to secure confessions from suspects, through protracted questioning, carried on in secrecy, with the inevitable disquietude and fears police interrogations naturally engender in individuals questioned while held incommunicado, without the aid of counsel and unprotected by the safeguards of a judicial inquiry. Disinterested zeal for the public good does not assure either wisdom or right in the methods it pursues. A report of President Hoover's National Commission on Law Observance and Enforcement gave proof of the fact, unfortunately, that these potentialities of abuse were not the imaginings of mawkish senti-

> mentality, nor their tolerance desirable or necessary for a stern policy against crime. Legislation throughout the country reflects a similar belief that detention for purposes of eliciting confessions through secret, persistent, long-continued interrogation violates sentiments deeply embedded in the feelings of our people.

In *Watts* v. *Indiana,* 338 U. S. 49, the opinion of Mr. Justice Frankfurter stated (pp. 53–54, 55):

> * * * We would have to shut our minds to the plain significance of what here transpired to deny that this was a calculated endeavor to secure a confession through the pressure of unrelenting interrogation. The very relentlessness of such interrogation implies that it is better for the prisoner to answer than to persist in the refusal of disclosure which is his constitutional right. To turn the detention of an accused into a process of wrenching from him evidence which could not be extorted in open court with all its safeguards, is so grave an abuse of the power of arrest as to offend the procedural standards of due process.
>
> * * * * *
>
> In holding that the Due Process Clause bars police procedure which violates the basic notions of our accusatorial mode of prosecuting crime and vitiates a conviction based on the fruits of such procedure, we apply the Due Process Clause to its historic function of assuring appropriate procedure

> before liberty is curtailed or life is taken. We are deeply mindful of the anguishing problems which the incidence of crime presents to the States. But the history of the criminal law proves overwhelmingly that brutal methods of law enforcement are essentially self-defeating, whatever may be their effect in a particular case. See, *e. g.*, Radzinowicz, A History of English Criminal Law and its Administration from 1750, *passim* (1948). Law triumphs when the natural impulses aroused by a shocking crime yield to the safeguards which our civilization has evolved for an administration of criminal justice at once rational and effective.

And members of the Court who have disagreed with particular dispositions have agreed on the general principle. See, *e. g.*, Mr. Justice Jackson's opinion in *Ashcraft* v. *Tennessee*, 322 U. S. 143, 159:

> * * * The Constitution requires that a conviction rest on a fair trial. Forced confessions are ruled out of a fair trial. They are ruled out because they have been wrung from a prisoner by measures which are offensive to concepts of fundamental fairness.

Unquestionably, therefore, respondents' third-degree methods in this case were plainly in violation of fundamental rights secured to their vic-

tims by the Fourteenth Amendment.[2] And since such rights have been made specific and definite by numerous decisions interpreting the Amendment, they are protected by Sections 19 and 20; and one who acts "in open defiance or in reckless disregard" of the constitutional requirement is "not punished for violating an unknowable something." (Opinion of Douglas, J., in *Screws*, p. 105.) Hence it is immaterial that respondents may have relied upon a belief that they would not be held liable for their actions because others equally guilty may have escaped prosecution under the statute. Even if the facts as to the widespread use of the third-degree are as asserted by respondents, this surely gives them no defense for their criminal acts. It is elementary that a failure to catch or prosecute some violators of a law does not immunize those who are prosecuted; nor does it in any way affect the scope of the statute. "Failure to enforce the law does not change it." *Louisville & N. R. Co.* v. *United*

[2] This would appear to be an *a fortiori* conclusion from *Wolf* v. *Colorado*, 338 U. S. 25, holding that the Fourteenth Amendment protects one from an unreasonable search and seizure by state officers. "The security of one's privacy against arbitrary intrusion by the police—which is at the core of the Fourth Amendment—is basic to a free society. It is therefore implicit in 'the concept of ordered liberty' and as such enforceable against the States through the Due Process Clause." *Id.*, pp. 27–28. It could hardly be suggested that the security of one's person against arbitrary beatings by the police for the purpose of obtaining a "confession" is less indispensable to a free society.

States, 282 U. S. 740, 759; and see *Kelly* v. *Washington,* 302 U. S. 1, 14; *Chicago, B. & Q. R. Co.* v. *Iowa,* 94 U. S. 155, 162; *Homer & Son* v. *Commonwealth,* 106 Pa. St. 221; *Costello* v. *Palmer,* 20 App. D. C. 210, 220.

II

Respondents state (p. 23) that the debates in Congress concerning enactment of the Enforcement Act of May 31, 1870, 16 Stat. 140, show that Section 6 of that Act, which is the original form of Section 19 of the Criminal Code, "was adopted solely for the purpose of protecting the rights secured by the Fifteenth Amendment."

This statement is true only of the bill (H. R. 1293, 41st Cong., 2d Sess.) as passed by the House, which dealt only with the question of suffrage. See Flack, *Adoption of the Fourteenth Amendment,* p. 219. The legislation was substantially altered, however, during the course of its consideration in the Senate. Numerous amendments, including Section 6, were introduced. We have quoted in our main brief (pp. 28–31) the statements of Senator Pool, who introduced Section 6 and other amendments, which evince a purpose of broadening the legislation to protect not only voting rights under the Fifteenth Amendment but all other rights secured by the Constitution, and in this connection the Senator particularly referred to the Fourteenth Amendment.

Other references to the Fourteenth Amendment appear in the debates. In view of the general character of these remarks, most of which were not specifically related to any particular provision, it cannot be categorically stated that, apart from Senator Pool's remarks, the debates disclose a clear Congressional recognition that Section 6 embraced the rights of life and liberty newly secured by the Fourteenth Amendment. But it cannot be doubted that both its proponents and opponents recognized that the Enforcement Act, as amended in the Senate and finally passed, had an extremely broad scope, and that it included provisions enforcing the Fourteenth Amendment.

In addition to Section 6, other amendments made by the Senate included a provision that all persons within the United States shall have the same legal rights in every State and Territory as white citizens (sec. 16), and that deprivation of such rights under color of law shall be criminal (sec. 17, which later became Section 20 of the Criminal Code); reenactment of the Civil Rights Act of 1866, 14 Stat. 27 (sec. 18); and provisions for removal and punishment of persons holding office in violation of Section 3 of the Fourteenth Amendment (secs. 14, 15). In almost every instance the debates are not clear as to which of these provisions, or Section 6, reference is being made. But considered in their entirety, these allusions to the Fourteenth Amendment, which are

set forth below as they appear in the Congressional Globe (41st Cong., 2d Sess.), demonstrate that no support can be found in its legislative history for the notion that the only constitutional rights intended to be secured by Section 6 were voting rights of citizens:

Senator Williams (p. 3656):

> The Senator from Nevada [Mr. Stewart] proposes a bill to enforce the fifteenth amendment, and upon that he piles another bill which is intended to enforce the fourteenth amendment, and upon that he piles another which is intended to protect citizens in the enjoyment of their civil rights; and this conglomerated mass of incongruities and uncertainties is to be put through here in the name of a bill to enforce the fifteenth amendment!

Senator Stewart (p. 3658):

> The Senator from Oregon [Mr. Williams] has objected several times to the additions that are made to this Senate bill * * *. One of them is simply a requirement that all citizens shall obey the fourteenth amendment and shall not violate the provisions of that amendment while it is in force. Everybody wants that amendment enforced while it is in force, both those who are in favor of amnesty and those who are opposed to amnesty.

Senator Stewart then said, referring to that part of the bill relating to the equal protection of the laws (p. 3658):

> Why is not this bill a good place in which to put that provision? Why should we not put in this bill a measure to enforce both the fourteenth and fifteenth amendments at once? * * * The fourteenth amendment to the Constitution says that no State shall deny to any person the equal protection of the laws. Your treaty [with the Chinese] says that they shall have the equal protection of the laws.

* * * * *

Senator Thurman (p. 3672):

> * * * We thought we were to act upon a bill simply to enforce the fifteenth amendment; but that bill was hardly before the Senate before the Senator introduced an amendment to enforce the fourteenth amendment. * * *

At the end of an all-night debate, the Senate passed the Enforcement Bill at 7 a. m., May 21, 1870. See Flack, *supra*, p. 222. After the passage of the bill, the following colloquy occurred (p. 3690):

> *Mr. Stewart:* I move to amend the title by adding "and for other purposes."
>
> *Mr. Sumner:* It would be better to strike out all the words after "Union."
>
> *Mr. Trumbull:* Let it be read as it will stand if amended as proposed.

Mr. Sumner: It will then read, "A bill to enforce the right of citizens of the United States to vote in the several States of this Union."

Mr. Stewart: Add there the words "and for other purposes."

Mr. Sumner: Why do you want to have "other purposes" in?

Mr. Stewart: Here is a provision to enforce the fourteenth amendment. Strike out all after "Union" and insert "and for other purposes."

Mr. Trumbull: I think the title proposed by the Senator from Massachusetts would indicate the purpose of the bill better; and then put on "for other purposes."

Mr. Stewart: That is what I want. * * *

Mr. Trumbull: Read it, then, as it will read if amended.

The Chief Clerk: If amended as proposed the title will read: "A bill to enforce the right of citizens of the United States to vote in the several States of this Union, and for other purposes."

Mr. Sumner: That is the whole case.

Mr. Stewart: No; the fourteenth amendment, to prevent improper holding of office, and then the civil rights bill have been put on.

Mr. Sumner: Yes.

Mr. Stewart: So after Union insert "and for other purposes."

The title was so amended.[3]

---

[3] See *United States* v. *Classic*, 313 U. S. 299, 328, note 10.

After the legislation went to conference, Representative Bingham, of Ohio, in explaining the conference report to the House, said (p. 3871):

> * * * The House is doubtless aware that the Senate amendment, which was the subject of the conference, included substantially all that had been embraced in the bill reported to this House by the Judiciary Committee, and which had received the approval of the House. In addition to that, the Senate amendment contained various provisions for the enforcement of certain sections of the fourteenth article of the amendments to the Constitution.

Representative Beck, of Kentucky, said (p. 3874):

> * * * The bill which left us was simply a bill to enforce the fifteenth amendment, and we had a right to suppose * * * [Mr. Bingham] would insist on maintaining it in that form; instead of that it is abandoned, and he urges us to pass this bill of abominations * * * which pretends to reënact the infamous civil rights bill, and enforce the fourteenth as well as the fifteenth amendment. * * *
>
> * * * Under pretense of enforcing the fourteenth amendment the fifteenth section of this act imposes fines * * * against all persons whom the courts may think hold any office, however insignificant, in violation of that amendment.

Representative Davis said (p. 3881):

> What does this bill seek to do, Mr. Speaker? It has within its scope three important objects to enforce the provisions, or one provision, of the fourteenth article of amendments.
>
> Another object is to enforce the provisions of the fifteenth article of amendments * * *.

III

Respondents' brief (p. 44) concedes that "the trial Court did cover the question of specific intent in his charge to the jury even though he refused to use the words 'wilful' or 'wilfully'." As was pointed out in our main brief (pp. 66–68), the court expressly and repeatedly instructed the jury that it was not enough for the Government to prove that there was a conspiracy to do the acts alleged, and that the defendants had "a bad motive" or "a general intent to do * * * wrong", but that in order to convict, the jury had to find "that the defendants had in mind the specific purpose of depriving the complaining witnesses of those rights" enumerated in the indictment.

Respondents argue, however, that these instructions as to specific intent might not have been understood by the jury because at an earlier point in the charge the court, in defining gener-

ally the nature of a criminal conspiracy, said (R. 320):

> * * * While the parties to a conspiracy, if there is one, should be working together understandingly, this does not mean that they would understand that what they were doing would be a violation of law. All that is necessary is that they should understand what they are doing. If what they thus understandingly cooperate to do is a violation of law, in this case a deprivation of constitutional rights, then the conspiracy will have been established, even though the participants did not know that what they were doing would in fact be deemed to have been a deprivation or violation of any person's constitutional rights.

The record shows that while this instruction was requested by the Government (R. 275), the defendants made no objection to it during the colloquy between court and counsel preceding the charge, in which the various instructions requested by both sides were discussed (R. 290–305). The Assistant United States Attorney, on the other hand, did object to the instruction requested by the defendants (R. 278) that in order to convict, the jury had to find that the defendants had in mind the specific purpose of depriving the complaining witnesses of their constitutional rights. The trial court overruled such objection (R. 297), and the instructions on

intent given the jury were as requested by the defendants (R. 322; and see also R. 323, 326–330). At no point in the entire discussion preceding the charge (R. 290–314) did any of the counsel for the defendants object to the portion of the charge which is now criticized (R. 320) or suggest to the trial court that it was inconsistent with the other instructions regarding "specific intent".

After the charge was given the trial court asked both Government and defense counsel whether they had any exceptions to the charge (R. 334, 335). The Government prosecutor stated that he thought the Court's reiteration of the "specific intent" requirement "must necessarily have impressed the jury that the Court was emphasizing those things", and that this was a "rather prejudicial method of charging" (R. 335). The court overruled this exception (R. 337). But counsel for the defendants expressed no objection whatsoever to any of the instructions regarding intent, and in no way indicated that they thought the instructions given were inconsistent or in any respect prejudicial to the defense (R. 335–336).

It is clear, therefore, that the prejudicial error of which respondents now complain is nowhere reflected in the contemporaneous record of the trial. Construed, as it must have been by the jury, in the context of the charge as a whole, which contained repeated references to the re-

quirement of "specific intent," this particular instruction could not have misled the jury as to the necessity for finding "specific intent" as a prerequisite to conviction. The record shows that at the trial, when the judge might have corrected any possible error had they called his attention to it, defense counsel never raised any objections to this portion of the charge. On the contrary, the only complaint to the "intent" portion of the charge (apart from the defendants' objection to the court's failure to use the word "willful") was made by the Government prosecutor, and on the ground that it was too favorable to the defense. The court overruled such objection, and the matter rested there. No one, on either side, proposed to the trial judge that he should delete or withdraw the portion now asserted to be inconsistent with the remainder. Indeed, as respondents admit (Br. 44), they did not assign this point as error or include it in the twenty-eight points on which they relied in the court below (R. 374–377).

In these circumstances we believe the following is pertinent here: "It is a commonplace in the administration of criminal justice that the actualities of a long trial are too often given a meretricious appearance on appeal; the perspective of the living trial is lost in the search for error in a dead record. * * *. This was obviously a lawyer's afterthought. It does not pro-

mote respect for the Bill of Rights to turn such an afterthought into an imaginary injury that is reflected nowhere in the contemporaneous record of the trial, and make it the basis for reversal." *Glasser* v. *United States*, 315 U. S. 60, 88–89 (dissent).

Respectfully submitted,

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Solicitor General.

JANUARY, 1951.

U. S. GOVERNMENT PRINTING OFFICE: 1951

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Supreme Court of the United States

OCTOBER TERM, 1950.

No. 26.

UNITED STATES OF AMERICA, PETITIONER,

VS.

JAY G. WILLIAMS, CHARLES R. FORD, JOHN S. BOMBACI AND JOSEPH V. PERRY, RESPONDENTS.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT.

BRIEF FOR THE RESPONDENT, CHARLES R. FORD.

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OPINION BELOW.

The opinions of the Court of Appeals (R. 378-394) are reported at 179 F. 2d 644.

JURISDICTION.

The judgment of the Court of Appeals was entered on January 10, 1950 (R. 394). On February 8, 1950, by order of Mr. Justice Black, the time within which to file a petition for a writ of certiorari was extended to and including March 11, 1950 (R. 395). The petition was filed on March 9, 1950, and was granted on October 16, 1950. The jurisdiction of this Court is conferred by 28 U. S. C. 1254 (1). See also Rules 37 (b) (2) and 45 (a), F. R. Crim. P.

QUESTIONS PRESENTED.

1. Does Section 19 of the Criminal Code, Title 18, U. S. C., Sec. 51, which makes punishable as a felony a conspiracy by two or more persons to injure, threaten, or intimidate any citizen in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, contemplate and encompass a local offense of assault and battery committed by a police officer and others in the course of a criminal investigation in which third degree methods were employed for the purpose of gaining confessions and admissions?

2. Is Section 19, when employed to prosecute for a conspiracy to deprive citizens of rights secured by the Fourteenth Amendment, unconstitutional in that it fails to provide a reasonably ascertainable standard of guilt?

3. If Section 19 can be employed to prosecute for a conspiracy to deprive citizens of rights secured by the Fourteenth Amendment, is it not essential that the jury be instructed that, to convict, they must find that the de-

fendants conspired with the wilful intent to deprive citizens of such rights?

4. Where a defendant was tried with others charged under Section 20 with commission of the substantive act and was acquitted under instructions to convict if the jury found that he had committed the act or had aided, abetted, counseled, commanded, induced, procured, incited, encouraged, or assisted any one in its commission, can the defendant subsequently be legally convicted of a conspiracy to commit the substantive act, charged under Section 19, upon evidence in all material respects the same as that adduced at the first trial?

STATUTE INVOLVED.

Section 19 of the Criminal Code, 18 U. S. C (1946 Ed.) 51, now 18 U. S. C. (1948 Rev.) 241; provided as of the dates involved in this case:

> "If two or more persons conspire to injure, oppress, threaten, or intimidate any citizen in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, or because of his having so exercised the same, or if two or more persons go in disguise on the highway, or on the premises of another, with intent to prevent or hinder his free exercise or enjoyment of any right or privilege so secured, they shall be fined not more than $5,000 and imprisoned not more than ten years, and shall, moreover, be thereafter ineligible to any office, or place of honor, profit, or trust created by the Constitution or laws of the United States."

CONSTITUTIONAL PROVISION INVOLVED.

The Fourteenth Amendment to the Constitution of the United States provides:

> "Sec. 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.
>
> * * * * * * *
>
> "Sec. 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article."

STATEMENT.

On April 22, 1949, the respondents and two others, Yuhas and Dania Supply Company, were convicted in the United States District Court for the Southern District of Florida on all counts of a four count indictment. Each count charged violation of Section 19 of the Criminal Code (R. 1, 337, 356-365). Williams was sentenced to two years imprisonment, to run concurrently with a four year sentence previously imposed for conviction upon a charge laid under Section 20, Criminal Code, now before the Court in Cause No. 365 (R. 356).

The other respondents were each sentenced to imprisonment for one year and one day on Count One and to one year on each of Counts Two, Three and Four, to run concurrently, but consecutively to that imposed as to

Count One. The sentence as to Counts Two, Three, and Four in each case was suspended and each defendant was placed on probation for three years following completion of service of the sentence imposed as to Count One (R. 357-361).

Yuhas received a like sentence, all of which was suspended (R. 362).

A fine of $100.00 imposed upon each respondent and upon Yuhas was remitted.

Dania Supply Company (R. 362) was fined $4,000.00.

Count One of the indictment (R. 1), in substance, charges that on or about March 28, 1947, Williams and Perry, being special police officers, and Ford, being an employed police officer, all of The City of Miami, acting under the laws of the State of Florida and ordinances of the city, together with Bombaci, Yuhas and Dania Supply Company, conspired to deprive Frank J. Purnell, Jr., a citizen of the United States, of the rights and privileges secured to him and protected by Amendment XIV of the Constitution of the United States.

The rights and privileges alleged to be so protected being:

1. Not to be deprived of liberty without due process of law;

2. To be secure in his person while in custody of the State of Florida;

3. Not to be subjected to punishment without due process of law;

4. To be immune, while in the custody of persons acting under color of the laws of the State of Florida, from illegal assault and battery by any person exercising the authority of the said state; and

5. To be tried by due process of law and, if found guilty, to be sentenced and punished in accordance with the laws of the State of Florida.

The plan and purpose of the conspiracy, in substance, is alleged to be that the defendants (respondents) would arrest and detain Purnell in a building on the premises of Dania Supply Company and there illegally assault, beat and torture him in order to force him to admit an alleged theft of personal property belonging to Dania Supply Company, to force him to accuse others of participating in such thefts and to impose illegal summary punishment upon him.

It is alleged that the conspiracy was formulated and entered into by Ford, Williams and Perry, while acting in their official capacities.

Counts Two, Three and Four of the indictment are in all material respects identical to Count One, with the exception of the name of the subject of the alleged assault. In Count Two (R. 3), the person named as the subject of the alleged assault is Chester M. Robinson; in Count Three (R. 4), he is Henry W. Priest; and in Count Four (R. 5), he is John P. Sturniolo.

Testimony at the trial developed that Dania Supply Company, a lumber dealer, had engaged the Continental Detective Agency, headed by Williams, to investigate the loss or disappearance of lumber and building supplies. Perry, Bombaci and one Giroux, a witness for the Government, were employees of the detective agency, directed by Williams to work with him on this assignment. Ford, at that time a police patrolman on the Miami police force, was assigned by his superiors to assist in the investigation (R. 260-262). Yuhas was employed by the supply company as its comptroller and was assigned by an officer of the company to assist Williams.

All of the complaining witnesses were employees of the supply company at the time in question and each testified in substance that on or about the dates mentioned in the indictment, he had been called into a building, referred to as the paint shack, on the company's premises, and there questioned by the individual defendants (respondents and Yuhas) and Giroux concerning, and accused of, the theft of building supplies from the company.

Each testified that in the course of this investigation he was beaten, by being struck with fists and instruments, described as a dowel stick in some instances or a weighted rubber hose in other instances, in an effort to induce him to admit that he had stolen the company's property and further to induce him to implicate others in such thefts.

Each of the complaining witnesses was dealt with separately in the paint shack and each of the individual defendants (respondents) was present in the shack during some part of the questioning of each of the complaining witnesses.

There was no testimony that Ford, Perry or Yuhas engaged in the actual beating, the complaining witnesses testifying that Williams administered most of the blows, Bombaci participating to a lesser extent.

At the conclusion of the questioning of Purnell, he was released, the other complaining witnesses were lodged in the City Jail, and later, within a day or two, released.

The testimony of the complaining witnesses as to their treatment in the paint shack was corroborated by a Government witness, Henry B. Giroux.

Their testimony was further corroborated by witnesses who testified to marks and bruises being visible upon the bodies of the complaining witnesses shortly after the date of the occurrences in the paint shack.

The Government's evidence was sufficient to show that the defendants employed third-degree methods, and there was no evidence offered in denial of this. Aside from character evidence offered by Ford and evidence that he had been assigned by a superior to assist in the investigation (R. 257-266), no evidence was received from the defendants except in support of motions with instructions that such exhibits so received would not go to the jury (R. 253).

It is necessary to point out that, prior to the indictment and trial of the respondents as above stated, they had been tried in January, 1949, in the same Court on an indictment of eight counts in Cause numbered 7279-M-Cr. The record of these proceedings is before the Court in Cause numbered 365. The odd numbered counts of that indictment charged offenses, in substance, identical to those of the indictment in the case at bar. The even numbered counts of the previous indictment charged violation of Section 20 of the Criminal Code. These counts charged the commission of the acts which are made the object of the conspiracy alleged both in the odd numbered counts of the prior indictment and in the counts of the indictment in the case at bar; in other words, they charged commission of the substantive offense under Section 20 and not the conspiracy. The indictment in Cause numbered 7279 was received as defendants' Exhibit "D" (R. 254).

In the trial of the prior case, the Court charged the jury, *inter alia*, that if *any* of the defendants in any way aided, abetted, encouraged, or gave counsel in the commission of the overt act charged, he would be guilty as a principal. This charge was received as defendants' Exhibit "E" (R. 254) in support of defense motions relating to *res judicata* and former jeopardy. The pertinent por-

tions of the charge are found on pages 321, 322, 328, 330, 332, of the record in Cause No. 365, and are copied into the respondent Ford's proffered amendment to his motion to dismiss the indictment (R. 19).

The prior trial resulted in a verdict of guilty as to Williams and not guilty as to the other defendants of the even numbered counts charging violation of Section 20, and in a mistrial, the jury being unable to agree, of the odd numbered counts charging violation of Section 19, the conspiracy counts. The verdict in that case was received as defendants' Exhibit "F" (R. 254).

The record of the prior trial is presently before this Court in Cause No. 365, and reflects that in all material respects the evidence taken by the Government then is substantially the same as that taken by the Government in the case at bar.

Objection was made by the respondents, other than Williams, to the testimony of Government witnesses, relating to events that transpired in the so-called paint shack upon the ground of *res judicata*, and by Williams upon the ground of former jeopardy. Such objections were overruled (R. 42-44, 56, 72, 77, 80-81).

The Court refused to give a portion of the third jury instruction requested by the respondent Ford, which portion states in substance that the action of the jury in acquitting all but Williams in the prior trial of the substantive acts which are made the object of the alleged conspiracy forecloses the question in their favor as to whether or not such other defendants (respondents) did commit the acts alleged or aided, abetted, encouraged, counseled, commanded, induced, procured or in any way assisted any other person to commit such acts (R. 286-287, 293, 324-325).

The Court refused to give the third requested charge of all of the defendants (respondents) as it was submitted, and struck therefrom, where they appeared, the words "wilful" and "wilfully," the defendants having requested in substance, that the Court charge that to find a conviction the jury must find that the defendants conspired to commit the acts, alleged as the object of the conspiracy with wilful intent (R. 278, 293, 322-323).

The Court of Appeals for the Fifth Circuit, on January 10, 1950, reversed the respondents' convictions, and quashed the indictment upon the ground that the Statute Section 19, when applied to the "due process" provision of the Fourteenth Amendment, fails validly to create a crime because of the extreme vagueness of the provision "Nor shall any State deprive any person of life, liberty or property without due process of law" (R. 380), 179 F 2d 644, 647.

The Court of Appeals further expressed the opinion that, if it is determined that Section 19, when applied to the Fourteenth Amendment, does create a crime, then the Trial Court erred in giving inconsistent charges on the nature of the offense and in refusing to charge that a wilful deprivation of a known federal right was a necessary element of the conspiracy (R. 382-383), p. 648.

The Court expressed the further opinion that the Trial Court erred in excluding from evidence the record and the charge of the Court in the prior case in which all but Williams were acquitted of the substantive act.

Judge Waller concurred in the opinion and concurred especially. Judge Holmes dissented.

SUMMARY OF ARGUMENT.

I.

Section 19, Criminal Code, when applied to the due process provision of the Fourteenth Amendment, because of the extreme vagueness of that provision, is lacking in an ascertainable standard of guilt and therefore fails to validly create a crime.

When applied to such provision, Section 19 is subject to all and the same criticism for vagueness as is Section 20, and is not saved by use of the word "wilful," as that word is construed in *Screws* v. *United States*, 325 U. S. 91. The words "wilful" or "wilfully" are not found in Section 19, nor were they included in the indictment although the term "under color of state law," likewise omitted from the Statute, was employed in the indictment.

A statute, which has lain dormant as applied to certain acts for a long time and generally considered to be no crime, should not suddenly be resurrected and, by unusual and strained judicial construction and interpretation, be made to apply to such acts, making their commission a crime. Such practice is as objectionable as passage of *ex post facto* laws.

The Fourteenth Amendment does not secure rights or privileges as between citizens, but protects persons from deprivation of certain fundamental rights by State action. *United States* v. *Cruikshank*, 92 U. S. 542.

Since the term "under color of state law" is not included in Section 19, the Statute does not warn police officers that the act applies to their actions as such, making them the acts of the State.

If the acts of respondents amounted to conspiracy to violate Section 20, then they would be subject to punishment under the general conspiracy statute, Title 18, U. S. C. 88, Section 37, Criminal Code, at the time of the alleged offense. The penalty provided by Section 37 is much less severe than that provided by Section 19.

Examination of Congressional debate concerning the Enforcement Act of 1870 (Act of May 31, 1870, C. 114, Stat. 141) and particularly concerning Section 6 of the Act which has, with some alterations, become Section 19, indicates that the primary purpose of the proponents of the Bill was to protect the new citizens in their right to vote (Congressional Globe, 41st Congress, 2d Session, 3503, 3808). It is an Act to enforce the provisions of the Fifteenth Amendment.

Section 6 of the Act was intended to prevent unlawful combinations, such as the Ku Klux Klan, from intimidating persons and thereby contravening the rights conferred by the Fifteenth Amendment (Congressional Globe, 41st Congress, 2d Session, 3550, 3611).

Third-degree methods have been openly employed by police departments in various sections of the country for years. This fact must have been known to the Court and to officers of the Department of Justice because of the cases which have come to the Court involving confessions obtained by such methods, and yet no federal action has been taken to punish officers employing such methods until the prosecution here. The Screws case is not analogous because the acts there committed were not done pursuant to an investigation but were done through malice. Even so, a demurrer was there sustained to a count charging violation of Section 19. These facts would lead a reasonably prudent man to believe that Section 19 does not

apply to third-degree methods employed by police officers.

The Report of The President's Committee on Civil Rights, entitled, "To Secure These Rights," indicates the inadequacy of Sections 19 and 20 for employment by federal authorities in enforcement of rights protected by the Fourteenth Amendment as between individuals. It recognizes the fact that these sections do not "adequately define the conduct which is forbidden." It states that, in using these statutes, the Civil Rights Section "has been compelled to employ an experimental technique and to endeavor to extend the list of these rights, case by case" (P. 117).

It would appear that, by omitting the word "wilfully" from the indictment here and by using the term "under color of state law," the Government is deliberately attempting to enlarge the scope of Section 19, thus circumventing the Congress.

The fundamental rights of persons were and are not secured by the due process clause of the Fourteenth Amendment. They were secured by the people long before that Amendment was drafted. The secured rights which Section 19 is designated to protect for citizens are those rights made specific by expressed constitutional, statutory or similar provisions, and are not all human rights protected for the benefit of citizens and aliens alike and defined, if defined at all, only in the great mass of judicial decisions.

Surely Congress would not protect our citizens from abusive treatment by police officers and withhold such protection from visitors to this country.

II.

Since Section 19, when applied to rights found in the due process clause of the Fourteenth Amendment is lacking in an ascertainable standard of guilt to the same extent as is Section 20, then, in order to comply with the requirements of specificity laid down in the Screws case, it must be shown that the defendants intended, as the object of their conspiracy, to wilfully deprive citizens of rights secured by the Amendment.

The question is not whether defendants "wilfully" conspired, but whether they conspired to "wilfully" deprive citizens of rights secured.

If this requirement is not met, every time two or more police officers mistakenly make an arrest upon suspicion, they will be faced with prosecution for a most serious felony. See concurring opinion of Judge Waller in the case below, 179 F. 2d 644, 652 (R. 388).

The trial Court refused to instruct the jury that the defendants must have intended wilfully to do the act which was the object of the conspiracy, as distinguished from doing it knowingly, and the Court struck the word "wilfully" wherever it was used in requested charges (R. 278, 293, 322).

The Court did instruct that the defendants must have had a specific intent to deprive the complaining witnesses of rights and privileges guaranteed under the Fourteenth Amendment, but the Court also charged that it is not necessary that the defendants "would understand that what they were doing would be a violation of law. All that is necessary is that they should understand what they are doing. If what they thus understandingly cooperate to do is a violation of law, in this case a deprivation of constitutional rights, then the conspiracy will have been

established, even though the participants did not know that what they were doing would in fact be deemed to have been a deprivation or violation of any person's constitutional rights" (R. 319).

This instruction appears to be directly contrary to the criteria laid down in the Screws case, and, if so, is misleading and erroneous.

If so, it is not cured by the other instructions mentioned. It would be impossible for this Court to determine which of the instructions the jury followed, see *Mills* v. *United States*, 164 U. S. 644:

> "A conviction ought not to rest on an equivocal direction to the jury on a basic issue." *Bollenback* v. *United States*, 326 U. S. 607.

The error is not cured where the jury is at liberty to follow the erroneous portion of the instructions, *Dr. J. H. McLean Medicine Co.* v. *United States*, 253 Fed. 694 (8th Cir.). An erroneous instruction is not cured by a subsequent correct one, unless the former is withdrawn, *Nicola* v. *United States*, 72 F. 2d 780 (3rd Cir.).

It is not sufficient that the jury may reach a right conclusion, the instruction must be so framed that the jury may not draw the wrong conclusion, *Miller* v. *United States*, 125 F. 2d 968.

III.

Prior to the trial in the instant case, the same trial defendants were tried in the same court on an indictment in eight counts. The odd numbered counts charged the defendants with conspiracy under Section 19 and are, in all material respects, identical to the four counts of the indictment here.

The even numbered counts charged violation of Section 20 and in effect charged the commission of the substantive act which is made the object of the conspiracy alleged in the odd numbered counts and in the counts of the indictment in the instant case.

The record of proceedings in the prior case is before this Court in Cause No. 365, *Jay G. Williams* v. *The United States.*

Williams was convicted of the even numbered counts charging violation of Section 20, the substantive charges.

All of the other trial defendants were acquitted of those counts.

A mistrial resulted as to all of the odd numbered or conspiracy counts.

The evidence adduced at the former trial is in substance the same as that adduced in the trial of the case at bar.

The evidence of the alleged conspiracy is confined to proof of the commission of the substantive act.

The Court in the prior case charged the jury that, if any of the defendants committed the substantive acts alleged or if any of them aided, abetted, counseled, commanded, induced, procured, incited, encouraged or assisted any one else in the commission of the act, it would be their duty to convict him (R. 321, 322, 328, 330, 332).

It is contended here as it was in the Circuit Court of Appeals and District Court that under such instructions and since the evidence of conspiracy is evidence of the commission of the act, the verdict in the prior case and that the question of whether or not the trial defendants, other than Williams, participated criminally in any way in the

performance of such acts was foreclosed in favor of such defendants by the verdict in the prior case.

The Court of Appeals did not rule that the prior acquittal barred the present action or that the questions raised in the prior trial were *res judicata* but did hold that the trial Court erred in refusing to admit the record of proceedings had and charge of the Court given in the first trial into evidence in the trial of the case at bar.

The Government contends that *res judicata* is a plea in bar which presents a legal rather than a factual question and in this we agree but we submit that the least that could have been done would have been to follow the procedure suggested by the Appeals Court.

The case of *Sealfon* v. *United States*, 332 U. S. 575, is authority for our contention that the question of whether or not the defendants, other than Williams, participated criminally in the commission of the substantive act alleged was determined in their favor by the verdict in the first trial and is *res judicata*.

ARGUMENT.

I.

Section 19, when applied to the due process provision of the Fourteenth Amendment, "nor shall any state deprive any person of life, liberty or property without due process of law," fails validly to create a crime, because of the extreme vagueness of such provision.

In *Screws* v. *United States*, 325 U. S. 91, Mr. Justice Douglas, in whose opinion the Chief Justice, Mr. Justice Black and Mr. Justice Reed concurred, after considering the contention that Section 20 is unconstitutional when applied to the due process clause of the Fourteenth Amendment because it is lacking in an ascertainable standout of guilt stated, page 100:

> "Only if no construction can save the Act from this claim of unconstitutionality are we willing to reach that result We do not reach it, for we are of the view that if Sec. 20 is confined more narrowly than the lower courts confined it, it can be preserved as one of the sanctions to the great rights which the Fourteenth Amendment was designed to secure."

The word "wilful" in the Statute was then held to be the saving feature.

The Statute under consideration is subject to all of the charges of vagueness laid against Section 20. It is defective for the same reasons assigned in the Screws case. It is lacking in the cure.

Mr. Justice Rutledge, concurring specially, said in the *Screws case* page 119:

"Sections 19 and 20 are twin sections in all respects that concern any question of vagueness in defining the crimes. There are important differences. Section 19 strikes at conspiracies, Sec. 20 at substantive offenses. The former protects 'citizens,' the latter 'inhabitants.' There are, however no differences in the basic rights guarded. Each protects in a different way the rights and privileges secured to individuals by the Constitution. If one falls for vagueness in pointing to these the other also must fall for the same reason. If one stands, so must both. It is not one statute therefore which we sustain or nullify. It is two."

If the defendants in the Trial Court could reasonably have been expected to know that the acts which they were alleged to have committed in conspiring to employ third-degree methods in the course of their investigation were in violation of a particular law of the United States, then they should be subject to punishment under that law.

If not, the Government should not subject the legal machinery of the United States to the criticism that acts under which persons are punished are so vague, so complicated, so veiled in ambiguities and so enforced that the laws are mere traps, that prosecutions become persecutions, and that defendants are unfairly and unjustly convicted.

For the Judiciary, by the employment of odd, unusual and strained construction, to suddenly make that act a crime which has long and generally been considered no crime is a practice as fraught with evil as is the employment of *ex post facto* laws, a practice deplored and condemned by free men.

"The creation of crimes after the commission of the fact, or, in other words, the subjecting of men to punishment for things which, when they were

done, were breaches of no law, and the practice of arbitrary imprisonments, have been, in all ages, the favorite and most formidable instruments of tyranny." The Federalist, No. LXXXIV (attributed to Hamilton).

How would the defendants at the trial know that conspiracy to employ third-degree methods is a federal offense?

If they read Section 19, they would not know, for nothing of the kind is mentioned there. The Statute says that they shall not conspire to injure, oppress, threaten or intimidate any citizen in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, or because of his having so exercised the same.

If they are presumed to know the law, they will also know that the Fourteenth Amendment does not secure rights or privileges as between citizens but protects persons from deprivation of life, liberty or property without due process, by State action.

They will know that this Court, in *United States* v. *Cruikshank*, 92 U. S. 542, 23 L. Ed. 588, said, page 553:

> "The third and eleventh counts are even more objectionable. They charge the intent to have been to deprive the citizens named, they being in Louisiana, 'of their respective several lives and liberty of person without due process of law.' This is nothing else than alleging a conspiracy to falsely imprison or murder citizens of the United States, being within the territorial jurisdiction of the State of Louisiana. The rights of life and personal liberty are natural rights of man. 'To secure these rights,' says the Declaration of Independence, 'Governments are instituted among men, deriving their just powers from

the consent of the governed.' The very highest duty of the States, when they entered into the Union under the Constitution, was to protect all persons within their boundaries in the enjoyment of these 'unalienable rights with which they were endowed by their Creator.' Sovereignty, for this purpose, rests alone with the States. It is no more the duty or within the power of the United States to punish for a conspiracy to falsely imprison or murder within a State, than it would be to punish for false imprisonment or murder itself.

"The Fourteenth Amendment prohibits a State from depriving any person of life, liberty or property, without due process of law; but this adds nothing to the rights of one citizen as against another. It simply furnishes an additional guaranty against any encroachment by the States upon the fundamental rights which belong to every citizen as a member of society. As was said by Mr. Justice Johnson, in *Bk.* v. *Okely*, 4 Wheat. 244, it secures 'The individual from the arbitrary exercise of the powers of government, unrestrained by the established principles of private rights and distributive justice.' These counts in the indictment do not call for the exercise of any of the powers conferred by this provision in the Amendment."

As Judge Waller pointed out in his concurring opinion below, page 651 (R. 386):

"The right not to be beaten by two or more persons can hardly be said to be a right or privilege that is 'secured' to 'the free exercise and enjoyment' of any citizen of the United States. The terms 'free exercise' and 'enjoyment' connote active use or positive utilization of privileges rather than a mere passive possession thereof. It seems grossly inapt to speak of a person as 'having free exercise' of the privilege of being immune from assault and battery, or as having the 'free exercise and enjoyment' of the

> right to be tried and punished under the laws of Florida; or in freely exercising the right to be secure in his person while in the custody of the State of Florida. In short, one does not freely exercise or enjoy being in the custody of the State of Florida nor being tried and punished by due process of law. The citizen does, however, freely exercise or enjoy the privilege to vote, to assemble, to worship, to speak, or, that is, such privileges as are exercised or enjoyed by him out of his own activities."

But, the Government will say, at least one of these alleged conspirators was a police officer and even though he was acting in violation of the laws of his State, his actions were "under color of State law," and were therefore State action.

Where is there mention of the term "under color of State law" in Section 19? If our alleged conspirators look further, they will find that expression used in Section 20 which follows, under the heading in U. S. C., "Depriving Citizens of Civil Rights under Color of State Laws," but the term is not employed in Section 19, and since it is not, they may reasonably assume that it was not intended to be so employed, and that punishment of persons exercising State law, because of a misuse of such authority, is not contemplated by Section 19, being specifically mentioned in Section 20.

If the acts which the alleged conspirators contemplate are in violation of Section 20, they may reasonably expect prosecution under the general conspiracy Statute, then U. S. C., Title 18, Section 88, Section 37, Criminal Code, but the punishment provided under that Statute is much less severe than is provided by Section 19.

Assume that our alleged conspirators had examined the debates in the Congress concerning enactment of the

Enforcement Act of 1870 (Act May 31, 1870, Ch. 114, Stat. 141) which includes, as Section 6, the provision which, with some change, became by re-enactment Section 19.[1]

From these they would gather that the section was adopted solely for the purpose of protecting the rights secured by the Fifteenth Amendment. From statements of opponents to the measure, they might readily conclude that the whole purpose of the Act was to enable the majority party to maintain its majority. The unhappy history of this tragic era lends some support to this contention.

Mr. Bingham, speaking in the House of Representatives on May 16, 1870, in reporting the Bill (H. R. No. 1293) out of Committee, said (Cong. Globe, 41st Congress, 2d Session, 3503):

> "The object of the bill is to enforce the legal right of the citizens of the United States to vote in the several States of this Union—a right which is defiantly denied in my own State and in others, in direct contravention of the express letter of the Constitution of the United States."

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[1]Section 6, Ch. 114, Stat. 141, provided: "That if two or more persons shall band or conspire together, or go in disguise upon the public highway, or upon the premises of another, with intent to violate any provision of this act, or to injure, oppress, threaten or intimidate any citizen with intent to prevent or hinder his free exercise and enjoyment of any right or privilege granted or secured to him by the Constitution or laws of the United States, such person shall be held guilty of a felony, and, on conviction thereof, shall be fined or imprisoned, or both, at the discretion of the court—the fine not to exceed five thousand dollars, and the imprisonment not to exceed ten years—and shall, moreover, be thereafter ineligible to, and disabled from holding, any office or place of honor, profit, or trust created by the Constitution or laws of the United States."

Of course, as introduced, the Bill did not include the section under discussion here. (Cong. Globe, 41st Cong., 2d Session, 3503). That section subsequently was introduced as an amendment in the Senate by Senator Pool. Before such amendment was offered, Senator Stewart stated (Cong. Globe, 41st Cong., 2d Session, 3550):

> "* * * The Senator from North Carolina (Mr. Pool) has made some suggestions, and has prepared one or two sections which strike me very favorably. One of those sections provides against unlawful combinations to intimidate voters, which would come in properly in connection with this bill. It prevents intimidation outside of the immediate relation to registration and to voting, going upon the plantations, Ku Klux Klan, etc. * * *"

On May 19, 1870, Senator Pool stated (page 3611):

> "I believe that any bill will be defective which does not make it a highly penal offense for men to conspire together, to organize themselves into bodies, for the express purpose of contravening the right conferred by the Fifteenth Amendment."

Senator Pool also spoke of enforcing the rights protected by the Thirteenth and Fourteenth Amendments but in this connection it appears that he was speaking of those provisions, including the section which has become Section 20, of the Civil Rights Act of 1868, which were incorporated in the Senate Amendment to H. S. No. 1293.

Senator Stewart, speaking for the Bill, as amended in the Senate, on May 25, 1870, stated, page 3308:

> "Our law is only for the protection of the ballot-box. We proclaim now and here that we will exert all the power we can exert under the Constitution to protect the ballot-box in every State of the Union. We probably have not got enough legislation in this

bill on that subject, but if the occasion arises we will invent more. We will make the effort to see if it is in the power of this Government to prevent its being turned into anarchy and confusion by a conspiracy in New York or Georgia or Louisiana.

"That is one feature of this bill. It is a good bill. I say, 'let us have peace'; but peace upon what terms? The terms upon which we want peace and upon which we intend to have it, and the only terms upon which peace can be had, are that every citizen of the United States, without regard to color, shall have an equal opportunity to vote; that no State shall deny to any person, whether he is an alien or a native-born citizen, the equal protection of the laws; that while we have the power to regulate the time and the manner of elections for members of Congress we will not allow repeaters, if we can help it, but will have a fair vote of the people. We will have peace on the terms of protecting the citizens of the United States and by respecting the Constitution; and these are the only terms on which we can have peace."

Mr. Davis, speaking for the Bill in the House of Representatives, on May 27, 1870, page 3881, said:

* * * "In respect to the fourteenth article of amendments to the Constitution this bill contains two provisions. One is to enable a proceeding to be brought by writ of quo warranto against any person who enters upon an office in violation of the provisions of the Constitution of the United States. * * *

"The bill then provides a penalty for the person who shall enter upon the exercise of the duties of any office in violation of the Constitution; and that provision is so framed, it will be noticed, that it leaves in the discretion of the court the punishment, not a severe one at the worst, to be exercised according to the just discretion of the court."

It is interesting to note that Senator Bayard, speaking of Section 6 of the Bill, as amended, anticipated the

difficulties with which we are now confronted. He said, page 3804:

> "What a proposition! What are the 'rights or privileges secured to citizens by the Constitution and laws of the United States?' If you mean to make it an offense to invade these rights, it is your duty as legislators to point out the precise offense intended. That could be made the basis, with a partial court, with an excited and partial jury, to convict a man for an act apparently the most innocent, by raking up some possible right, throwing a drag-net over all the laws of the United States, and from all those extracting some possible exercise of a right or privilege which this party intimidated another from enjoying, * * *
>
> "Here, with this utterly indefinite charge against a man, something that no man could discover if he talked for a week, and undertook to point out all the possibilities that partisan ingenuity could define, the partiality of prejudiced jurors or judges may create that a felony of which no man dreams at this time, and which no man can define with that certainty which criminal justice requires you to exercise in creating statutory offenses of a high grade."

Now, another reason why these alleged conspirators could and should not be reasonably expected to anticipate federal prosecution under Section 19, for employing or planning to employ third-degree methods in the course of their investigation into the theft of lumber and materials, is the fact that this section has not been utilized for such purpose since its enactment in 1870.

The fact that such police methods have been employed for years by numerous police departments in various sections of the country is no secret. It is generally known. It would have been known by the defendants. It is and has been known to this Court by reason of the numerous

cases involving confessions obtained by such methods which are presented to the Supreme Court.

Surely the Department of Justice has known for many years that third-degree methods have been employed.

The enforcement officers of the Government enjoy an enviable reputation for their perseverance, thoroughness, and success in detecting the commission of federal offenses and in bringing the perpetrators to justice. Such a reputation would not be unknown to the defendants below. And yet, we fail to find where the Government has attempted to utilize the provisions of Section 19 to punish police officers for employing third-degree methods up to the time of the present case except in the Screws case, and there a demurrer was sustained to that count of the indictment charging a violation of Section 19, by order of the District Judge dated August 30, 1943.

Would not the fact that such practices have gone unnoticed by the officers charged with enforcement for some seventy-five years be reason enough for an ordinarily prudent man to believe that the employment of third-degree police methods does not constitute an offense under this section?

Indeed, if the alleged conspirators are presumed to know the law, would not the fact that a demurrer was sustained to Count One of the indictment in the Screws case, the count which charged violation of Section 19, indicate to them that Section 19 does not apply to the acts which they committed?

It is submitted that about the only way the defendants below could have anticipated that they might be prosecuted under Section 19 would be for them to have read the Report of The President's Committee On Civil Rights, en-

titled, "To Secure These Rights" published by the Government Printing Office in 1947. On page 117 of this pamphlet it is stated that:

> "The most serious difficulty which the Civil Rights Section has encountered in using these sections has been to determine the specific civil rights they protect. Presumably, the two laws protect any and all rights established by the Constitution or by federal statute. But the Constitution nowhere lists personal rights which may be protected by the government nor does any federal statute enumerate them. *In using Section 51 and Section 52 to protect specific rights, the Civil Rights Section has been compelled to employ an experimental technique and to endeavor to extend the list of these rights case by case.* Considerable success has been achieved in this undertaking, and action in the future may expand further the list of rights under Section 51 protected against interference by private individuals. The list of federal rights running against interference by state officers and protected by Section 52 is a somewhat more definite one. Decisions of the Supreme Court in recent years have read many of the rights established by the first 10 Amendments into the Fourteenth Amendment. This has made them federal rights against state interference.
>
> "*A further handicap under which the Section has worked has been the insistence of the courts that the use of these statutes should be governed by the traditional and wholly sound legal doctrine that criminal laws must adequately define the conduct which is forbidden. Because these statutes are vaguely worded, the courts have sometimes been reluctant to see them applied in specific situations. They have taken the position that the accused had not received sufficient warning from the vague terms of the statute that his conduct was forbidden*" (Emphasis supplied).

Had the defendants read the above quotation, there can be no legal presumption that they did, they might have

been put on notice that by their act they subjected themselves to becoming guinea pigs in an experiment by the Civil Rights Section in the employment of its technique.

The report indicates that even the proponents of a strong federal civil rights program are of the opinion that Section 19 is too vague to be enforceable so far as rights secured by the Fourteenth Amendment are concerned.

On page 104 the Committee said:

> "The Committee believes that national leadership in this field is entirely consistent with our American constitutional traditions. *It is true that the federal government does not possess broad, clearly defined delegated powers to protect civil rights which it may exercise at its discretion.* A detailed examination of the constitutional aspects of the civil rights problem makes clear that very real difficulties lie in the way of federal action in certain areas. It also makes clear that effective federal power does exist under the Constitution" (Emphasis supplied).

It would appear that in the instant case, the Government has undertaken to amend Section 19 to meet requirements of the Civil Rights Section by inserting portions of Section 20 into it by way of the indictment.

Section 19 makes no mention of "color of any law, statute, ordinance, regulation or custom," yet the phrase, "acting under color of the laws of the State of Florida" was inserted in the indictment evidently in order to make Section 19 the twin of Section 20 and to enlarge its scope.

What is the reason for this? Why is it more advantageous to the Government to employ Section 19 rather than the general conspiracy statute Section 37?

Of course, the penalty provision of Section 19 is much more severe than is that of Section 37, but another, though

more obscure reason, is suggested in the Committee Report abovementioned.

The Committee on page 116 complains that Section 52, Section 20 of the Criminal Code, is directed only against those deprivations of rights which are "wilful" and which occur "under color of any law." Section 52 is thus limited to the protection of rights against interference by public officers, whereas Section 51 may be used to prosecute private persons as well as public officers.

Now, if Section 19 can be used as a subterfuge for prosecuting offenses heretofore considered punishable only under Section 20, at least one of the Civil Rights Section's difficulties will be eliminated. The necessity of alleging and proving wilfulness will be obviated.

If this can be accomplished, and that accomplishment is sought here, we have no hesitancy in predicting that the next step in the experiment will be to eliminate the requirement that the act is done "under color of law" and thus the Civil Rights Section will have prevailed upon the Courts to do that which the Congress has so far failed to do in strengthening the Civil Rights program.

The word "wilful" is not used in the present indictment. Its omission, in view of the fact that the word holds such prominence in the Screws case, was, until he read the Committee report, difficult for the briefer to understand.

It appears now that such omission was a wilful attempt to circumvent the powers of the Congress.

Mr. Justice Roberts, Mr. Justice Frankfurter and Mr. Justice Jackson, in their dissenting opinion in the *Screws case*, 325 U. S. 91, 138, have clearly pointed out the injustice and unconstitutionality of this type of proceedings

under a vague enactment in Part II of their opinion, page 149. Nothing this writer could say would add to the expressions found there. We merely ask that they be incorporated by reference in this brief.

The opinions expressed by Judge Sibley and Judge Waller go directly to the weakness of the indictment and these expressions likewise are incorporated by reference.

The Government questions the statement by Judge Sibley, page 648 (R. 381), that,

> "In the conspiracy provision, the Congress had in mind the federal rights and privileges which appertain to citizens as such and not the general rights extended to all persons by the clause of the Fourteenth Amendment. The *citizen's* rights are *specifically* stated in the Constitution and statutes, and in them may be found a standard of conduct."

The Government, in Part I C of its brief, page 40, contends that, while Section 20 *protects* "inhabitants" and Section 19 *protects* "citizens," there is no difference between them with respect to the rights protected.

The fallacy of this argument is exposed by the opinion of Judge Waller, where it is said, page 651 (R. 387):

> "Section 51 is far more vague and indefinite than Section 52, and under the *Screws* case all that saved Section 52 from the abyss of invalidity was the word 'willful.' It is clear that Section 52 had reference to deprivation of rights of inhabitants—even though aliens—under the Fourteenth Amendment by its use of the phrase 'under color of any law, statute, ordinance, regulation, or custom.' Moreover, Section 52 prevents the deprivation not only of rights 'secured' but 'protected' by the Constitution and laws of the United States, while Section 51 does not embrace rights *protected* by the Constitution and laws. The rights

or privileges embraced in Section 51 are only those which are *secured* to the citizen by the Constitution and laws of the United States. The wording of Section 51 is not in harmony with the purposes which the United States seeks in this case to have the statute accomplish."

Then, as was pointed out in a previously quoted portion of Judge Waller's opinion, "The right not to be beaten by two or more persons can hardly be said to be a right or privilege that is 'secured' to 'the free exercise and enjoyment' of any citizen of the United States."

The fundamental human rights *protected* from State abuse by the due process clause of the Fourteenth Amendment were no more secured by that controversial instrument than were similar rights secured by the protections provided in the Bill of Rights attached to the Constitution. Some of the framers of the Constitution did not even consider it necessary or advisable to attach a Bill of Rights to the Constitution.

"It has been several times truly remarked that bills of rights are, in their origin, stipulations between kings and their subjects, abridgements of prerogative in favor of privilege; reservations of rights not surrendered to the prince. Such was Magna Charta, obtained by the barons, sword in hand, from King John. Such were the subsequent confirmations of that charter by succeeding princes. Such was the Petition of Right assented to by Charles I., in the beginning of his reign. Such, also, was the Declaration of Right presented by the Lords and Commons to the Prince of Orange in 1688, and afterwards thrown into the form of an act of parliament called the Bill of Rights. It is evident, therefore, that, according to their primitive signification, they have no application to constitutions professedly founded upon the power of the people, and executed by their immediate representa-

tives and servants. Here, in strictness, the people surrender nothing; and as they retain every thing they have no need of particular reservations. 'We, The People of the United States, to secure the blessings of liberty to ourselves and our posterity, Do Ordain and Establish this Constitution for the United States of America.' Here is a better recognition of popular rights, than volumes of those aphorisms which make the principal figure in several of our State bills of rights, and which would sound much better in a treatise of ethics than in a constitution of government."

* * * * * * *

"I go further, and affirm that bills of rights, in the sense and to the extent in which they are contended for, are not only unnecessary in the proposed Constitution, but would even be dangerous. They would contain various exceptions to powers not granted; and, on this very account, would afford a colorable pretext to claim more than were granted. For why declare that things shall not be done which there is no power to do? Why, for instance, should it be said that the liberty of the press shall not be restrained, when no power is given by which restrictions may be imposed? I will not contend that such a provision would confer a regulating power; but it is evident that it would furnish, to men disposed to usurp, a plausible pretense for claiming that power. They might urge with a semblance of reason, that the Constitution ought not to be charged with the absurdity of providing against the abuse of an authority which was not given, and that the provision against restraining the liberty of the press afforded a clear implication, that a power to prescribe proper regulations concerning it was intended to be vested in the national government. This may serve as a specimen of the numerous handles which would be given to the doctrine of constructive powers, by the indulgence of an injudicious zeal for bills of rights." The Federalist, No. LXXXIV (Attributed to Hamilton).

These rights were neither granted by the Government to the people nor secured by the Government for the People. They are rights which the people already had secured for themselves and which they intended to keep.

The Government cites cases to show that Section 19 has been employed to punish for violations of rights and privileges which do not "appertain to citizens as such," but it is believed that an examination of these cases will disclose that the rights or privileges violated were made specific, either by statute, expressed Constitutional provision, or some equally definite method, thus fixing a standard of conduct.

It would seem odd that the Congress of our country, which has welcomed persons from other lands, should protect our own citizens from abusive treatment by combinations of police officers and grant no such protection to our visitors and prospective citizens.

The above quoted expression from Judge Sibley's opinion finds ample support in the thorough, able and extremely well-reasoned opinion and order of Circuit Judge Morrow in *United States* v. *Wheeler*, 254 Fed. 611.

Indeed, we could not do better than quote the entire opinion as our brief since the authorities upon the question here involved have there been thoroughly considered and digested. We therefore invite the Court's attention to the case.

Briefly, the defendants in the cited case were indicted under Section 19 for conspiracy to deport certain citizens, some of whom were registered for military service under the Draft Act, from Arizona to New Mexico.

The Court held that the right to remain in one place or in one State, or to move freely from one State to an-

her, is not a right contemplated for protection under e Statute.

The question, which the Court answered in favor of e defendants, is stated thus, page 616:

"(4, 5) The question is broadly stated in the brief of the Assistant Attorney General in support of the indictment in this case as follows:

" 'We admit that the fundamental rights of a person as such or of a citizen as such, are not secured to him by the Constitution of the United States. The rights to life, liberty, and the pursuit of happiness, for instance, existed before the Constitution, were not created by it and hence are not secured by it, but by the Constitution and laws of the several states. If, however, these fundamental rights are brought into connection with the federal government, the situation is changed, and the right then becomes one secured by the Constitution of the United States.'

"He then proceeds to explain what he means by 'fundamental rights' being 'brought into connection with the federal government.'

" 'For example,' he says, 'ordinarily the right to remain in any one place, or to move freely from place to place, is not secured by the Constitution of the United States; but if state boundaries are brought into the question, if the right claimed be to remain in one of the several states of the federal Union, as distinguished from another, or to move freely from one of the several states into another state of the federal Union, it then becomes a right secured by the Constitution of the United States'—citing *Crandall* v. *Nevada*, 6 Wall. 35, 18 L. Ed. 745; *U. S.* v. *Patrick*, (C. C.) 54 Fed. 338-347."

In the final paragraph of the opinion, page 624, the urt asks a question which might well be asked here d in other similar cases where the Government seeks to

invade the province of the several States in order to attempt the execution of some program currently popular with federal authority:

> "(6) Why has this prosecution been brought in the federal court rather than in the state court, which had unquestioned jurisdiction of the offense charged? The Assistant Attorney General stated on the oral argument that it might be because there was such bias and prejudice in the community where the offense was committed against the persons complaining of the offense that the law of the state could not be enforced against the defendants. This is not a legal or constitutional ground of federal jurisdiction, although frequently urged as a ground of federal legislation covering subjects where local authority is unequal to the task of administering equal and exact justice to all; but it is difficult to understand the explanation in this case, if the large body of persons against whom the conspiracy is charged to have been directed were in fact *bona fide* citizens of the United States as claimed. Those that were citizens by naturalization proceedings were each required to prove to the satisfaction of the court by two witnesses at the time of naturalization that for five years prior thereto he had behaved as a man of good moral character, attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the same. Those that were native-born citizens should certainly have possessed an equally good moral character, have been equally loyal to the government of the United States, and equally attached to the principles of the Constitution of the United States, as those who had been naturalized. If this was the character of persons against whom the conspiracy was directed, we cannot understand why they could not submit their character and conduct to a tribunal in the community where they resided in proceedings against others for an open violation of the state law. The situation is indeed a lamentable one and one to be greatly deplored; but

it ought not to influence this court to enlarge the statute to include an offense not within its constitutional authority. As stated by the Supreme Court in *Hammer* v. *Dagenhart* (recently decided), 247 U. S. 251, 38 S. Ct. 529, 63 L. Ed. 1101:

" 'This court has no more important function than that which devolves upon it the obligation to preserve inviolate the constitutional limitations upon the exercise of authority, federal and state, to the end that each may continue to discharge, harmoniously with the other, the duties intrusted to it by the Constitution.' "

The decision in the cited case was affirmed by this Court in *United States* v. *Wheeler*, 254 U. S. 281, 65 L. Ed. 270.

II.

If Section 19 does contemplate conspiracy by police officers to employ third-degree methods in conducting investigations, a conviction can be upheld only if such officers wilfully intended as the object of the conspiracy to deprive citizens of rights secured by the Fourteenth Amendment, and the jury must be so instructed without equivocation.

Section 19, when applied to the due process clause of the Fourteenth Amendment is lacking in an ascertainable standard of guilt to the same extent that Section 20 would be lacking in such standard if the word "wilful" were omitted, and for the same reasons expressed in the Screws case.

The question is not whether the alleged conspirators "wilfully conspired" but whether they "conspired to wilfully deprive" citizens of rights secured by the amendment.

It can hardly be contended that the right to liberty is not a right which has been defined by judicial decision

and yet, as Judge Waller pointed out in his concurring opinion below, page 652 (R. 388):

> "If two or more policemen, in investigating a crime, should mistakenly arrest a citizen and hold him in jail for a reasonable time pending investigation, they would be liable, under Section 51, as written, to indictment, imprisonment for ten years, a fine of $10,000, and disbarment from holding any office or position of trust unless the statute required it to be alleged and proven that their acts were willful or in violation of a definite statute."

If the contention of the Government is to become established law, then the hands of law enforcement officers will be as effectively tied as if the Congress passed a law making it a felony for such officers to arrest any person unless his guilt is and can be established.

Judge Holmes opened his dissenting opinion with the statement, page 653:

> "We should not, I think, read the word *willfully* into the conspiracy statute on civil rights before the word *conspire*, as indicated in the majority opinion."

As we understand the majority opinion below, the word "willfully" is required to modify the act which is the object of the conspiracy and not as a modification of the word "conspire." At least, that was the contention of appellants below.

Naturally, if the object of the conspiracy is the commission of an act which has been made an offense by some definite provision of law such as a statutory or constitutional prohibition, then the objection of vagueness is removed and the word "willful" would be unnecessary, but when the rights secured are not defined by statute but can be found only in the great body of the law as set

up by judicial decisions, then, if we follow the Screws case, the objectionable feature can be overcome only by the use of the word "willful."

The trial defendants requested the District Court to charge the jury (R. 278) that:

> "* * * In this case, you must find a further fact that they intended willfully to do the act which was the object of the conspiracy.
>
> "Now, the word 'wilfully' has a meaning, and a very definite meaning, that must be carefully considered by you. In law, the use of the words, 'wilful' and 'wilfully,' imply a conscious purpose to do wrong. Doing a thing knowingly and wilfully implies not only a knowledge of the thing done, but a determination to do it with bad intent or with an evil purpose or motive. It is not sufficient that the defendants here had generally a bad purpose in doing the things they are alleged to have done, or that they went too far because of an excess of zeal in their desire to obtain confessions from the complaining witnesses."

The Court refused to give the quoted portion of the defendants' third requested charge and, in addition to the portion above quoted struck the words "wilful" and "wilfully" wherever they appear in such requested charge (R. 293, 322).

As regards intent the Court did deliver the following instructions:

> "In order to convict under this indictment, it is necessary for the jury to find that the defendants had in mind the specific purpose of depriving the complaining witnesses of those rights guaranteed them under the Fourteenth Amendment to the Constitution of the United States, which are enumerated in the indictment * * *" (R. 322).

"* * * The proof, if any, of a general intent to do the complaining witnesses a wrong is not sufficient, but a specific intent to deprive them of a Constitutional right, as the object of the conspiracy, if any, is a burden the law casts upon the Government" (R. 323).

"To return a verdict of guilt, under this indictment, you must, therefore, answer the following question in the affirmative: Did the defendants, or any two or more of them, knowingly and intentionally enter into a conspiracy with the specific intent, knowingly, and while acting under color of the laws of the State of Florida, to deprive the prosecuting witnesses, or any of them, of those rights and privileges guaranteed them under the Fourteenth Amendment, which are enumerated in the indictment?" (R. 323.)

"* * * The gist of the charge of conspiracy is the intent. It is not sufficient for the Government to show that the defendants, or any of them, had a bad motive or intent. The Government must show that the defendants, or at least two or them, entered into a plan and scheme to specifically deprive either Robinson, Sturniolo, Priest or Purnell of their constitutional rights as charged in the indictment. If you find from the evidence that it was not the defendants' specific intent to deprive the complaining witnesses of their constitutional rights, even though they did not act as ordinary prudent persons would have acted, then you must find the defendants not guilty" (R. 328).

"* * * The Government must show that the defendants, or at least two of them, entered into a plan and scheme to specifically deprive either Robinson, Sturniolo, Priest or Purnell of their constitutional rights as charged in the indictment. If you find from the evidence that it was not the defendant's specific intent to deprive the complaining witnesses of their constitutional rights, even though they did not act as ordinary prudent persons would have

acted, then you must find the defendants not guilty' (R. 329).

It would appear from the foregoing that the trial Court did cover the question of specific intent in his charge to the jury even though he refused to use the words "wilful" or "wilfully," but the Court's attention is invited to an instruction given by the trial Court prior to the instructions above quoted (R. 319).

> "* * * While the parties to a conspiracy, if there is one, should be working together understandingly, *this does not mean that they would understand that what they were doing would be a violation of law.* All that is necessary is that they should understand what they are doing. If what they thus understandingly cooperate to do is a violation of law, in this case a deprivation of constitutional rights, then the conspiracy will have been established, *even though the participants did not know that what they were doing would in fact be deemed to have been a deprivation or violation of any person's constitutional rights*" (Emphasis supplied).

So, here we have a confusing situation created by the Court first charging in effect that not only is no specific intent required in order to convict but that no intent at all to deprive the complaining witnesses of constitutional rights is required, and then later charging that a specific intent is required in order that a conviction may be found.

By which instruction was the jury to be guided? The one last quoted is clearly in conflict with the decision of the United States Supreme Court in the Screws case.

If we assume that the jury listened to and attempted to understand and be guided by the trial Court's instructions, can we say that they could or would disregard the clear direction given in the last quoted charge that "even

though the participants did not know that what they were doing would in fact be deemed to have been a deprivation or violation of any person's constitutional rights," they would be guilty if what they understandingly cooperated to do is a violation of law, "in this case a deprivation of constitutional rights."

Certainly the defendants below could have had no "wilful" intent to deprive the complaining witnesses of rights secured to them by the Fourteenth Amendment if they did not know that what they were doing would in fact be deemed to have been a deprivation of constitutional rights.

In the case of *Mills* v. *United States*, 164 U. S. 644, where, in a conviction for rape committed in Indian territory, the trial court had given an insufficient charge as to the amount of force requisite to support a conviction, this Court, in reversing the trial court, said in part, page 649:

> "Although it may be claimed that other portions of the charge of the learned court stated correctly the law with reference to this particular case, yet we cannot escape the fear that the error above pointed out may have found lodgement in the minds of the jury * * * Which of the two statements was received and acted upon by the jury it is wholly impossible for this court to determine, * * *"

True, in the cited case, the Court was concerned because the death penalty had been imposed and because it was not wholly satisfied by the testimony of the complaining witness, but the principle there laid down applies as much to the case at bar as in the cited case.

Respondents are also supported in their contention here by the case of *Bollenbach* v. *United States*, 326 U. S. 607, 90 L. Ed. 350.

There it was said, *inter alia*, page 613:

"* * * A conviction ought not to rest on an equivocal direction to the jury on a basic issue.

"* * * The Government's suggestion really implies that, although it is the judge's special business to guide the jury by appropriate legal criteria through the maze of facts before it, we can say that the lay jury will know enough to disregard the judge's bad law if in fact he misguides them. To do so would transfer to the jury the judge's function in giving the law and transfer to the appellate court the jury's function of measuring the evidence by appropriate legal yardsticks.

"* * * It would indeed be a long jump at guessing to be confident that the jury did not rely on the erroneous 'presumption' given them as a guide. A charge should not be misleading."

The Circuit Court of Appeals, Eighth Circuit, in 1918 in *Dr. J. H. McLean Medicine Co.* v. *United States*, 253 Fed. 694, reversed the trial court in a conviction for violation of the Food and Drugs Act, where, in instructing the jury regarding the fraudulent character of statements made by the defendant, the court inadvertently said, page 696:

"'One who makes a false statement, not knowing whether it is true or false, is as guilty of wrong as the man who makes a false statement knowing it is false.'"

The appellate Court, after announcing the correct rule to be that in such cases, there must be proof of an actual intent to deceive, said page 696:

"Other portions of the charge correctly stated the rule as to the good faith of the defendant, but did not purport to correct the portion of the charge we have quoted, and did not cure the error, for the jury were

at liberty to follow the erroneous portion of the instructions. *Mills* v. *United States,"* cited *supra.*

In *Nicola* v. *United States,* 72 F. 2d 780, decided by the Circuit Court of Appeals, Third Circuit, August 9, 1934, it is said, page 787:

> "Where two instructions are given to the jury, one erroneous and prejudicial and the other correct, it is impossible to tell which one the jury followed, and it constitutes reversible error. When an erroneous instruction has been given, it is not cured by a subsequent correct one, unless the former is withdrawn."

In *Miller* v. *United States,* 125 F. 2d 968, decided by the Circuit Court of Appeals, Tenth Circuit, June 12, 1941, where the Court found that an instruction relating to the weight to be given character evidence was too narrow, it is said, page 972:

> "It is not sufficient that an instruction be so drawn that a jury may reach the right conclusion, but it is required that it be so framed that a jury may not draw the wrong conclusion therefrom."

This error was noted by the appellate court even in the absence of exceptions by the defendants in the court below.

The Court's attention is also invited to the last paragraph of the cited case, page 973, where it is said:

> "The bars which guard the right to a fair trial, such as is guaranteed by our Constitution, include court procedure, rules of evidence and proper instructions to the jury. These bars must not be lowered. To do so is to strike at the very foundation of our system of jurisprudence which has for its ultimate goal the preservation and protection of the liberty and freedom of the individual citizen."

In the case at bar, exceptions to the charges delivered by the trial Court, and to the refusal of the Court to give requested charges where such requests were refused, were duly noted as follows (R. 295):

> "The Court: I will note now an exception in favor of each and every party making request to the non-giving of the request as submitted or the giving of the same in an altered form, and I likewise note an exception to the giving of any request by the opposite party; that is, in favor of the opposite party, the giving of the request, or giving it in altered form. The usual exceptions are in favor of the Government and each and every of the defendant."

Prior to the charges being delivered by the Court, defense counsel also offered to present specific exceptions to the charges to be given and to the Court's refusal to give charges requested by the defendants, but this offer was refused by the Court, as is reflected by the transcript of trial proceedings (R. 304).

III.

The trial defendants, other than Williams, having been acquitted of committing the act which is made the object of the alleged conspiracy, and of aiding, abetting, counselling, commanding, inducing, procuring, inciting, encouraging, or assisting any one in its commission, cannot subsequently be legally convicted of such conspiracy upon evidence in all material respects the same as that adduced at the first trial, where evidence of conspiracy is confined to facts tending to prove commission of the act.

Prior to the finding of the indictment in the instant case, the trial defendants were tried by the same court

in cause numbered 7279-M-Criminal, now before this Court in Cause No. 365.*

A copy of the indictment in that case was offered and received as evidence in support of various defense motions but not as evidence to go to the jury and was marked defendants' Exhibit D (R. 254).

The indictment is in eight counts. The odd numbered counts charge the defendants with conspiracy under Section 19, and it may be noted, are in all material respects identical to the four counts of the indictment in the case at bar.

The even numbered counts of the prior indictment charge violations of Section 20 and in effect charge the commission of the substantive act which is made the object of the conspiracy in the odd numbered counts of that indictment and in the counts of the indictment in the case at bar.

The material portion of count numbered 2 of the prior indictment reads as follows:

> "On or about the 28th day of March, A. D. 1947, * * * Jay G. Williams, Joseph V. Perry and John S. Bombaci, all being then and there special police officers * * * of the City of Miami, Florida, acting under the laws of the State of Florida and the ordinances and regulations of the municipality of Miami * * * and Charles R. Ford, who was then and there a police officer employed by the municipality of Miami, State of Florida, acting under the laws of the State of Florida, and the ordinances and regulations of the municipality of Miami * * * defendants herein, did wil-

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*In the prior indictment, 7279, Dania Supply Company was designated as Lindsley Lumber Company, but this designation was changed to Dania Supply Company in the course of that trial.

fully, under color of the laws, statutes, ordinances, regulations, and customs of the State of Florida and of the municipality of Miami * * *, subject and cause to be subjected Frank J. Purnell, Jr., an inhabitant of the State of Florida, to deprivation of the rights, privileges and immunities secured to him and protected by the Fourteenth Amendment to the Constitution of the United States, to-wit, the right and privilege not to be deprived of liberty without due process of law, the right and privilege to be secure in his person while in the custody of the State of Florida, the right and privilege not to be subjected to punishment without due process of law, the right and privilege to be immune, while in the custody of persons acting under color of the laws of the State of Florida, from illegal assault and battery by any person exercising the authority of said State, and the right and privilege to be tried by due process of law and if found guilty to be sentenced and punished in accordance with the laws of the State of Florida; that is to say, on or about the 28th day of March, 1947, the defendants arrested and detained and caused to be arrested and detained the said Frank J. Purnell, Jr., and brought and caused him to be brought to and into a certain building sometimes called a shack on the premises of the Lindsley Lumber Co., * * * in the said City of Miami, Florida, and did there detain the said Frank J. Purnell, Jr., and while he was so detained the defendants did then and there illegally strike, bruise, batter, beat, assault and torture the said Frank J. Purnell, Jr., in order illegally to coerce and force the said Frank J. Purnell, Jr., to make an admission and confession of his guilt in connection with the alleged theft of personal property, alleged to be the property of said Lindsley Lumber Co., and in order illegally to coerce and force the said Frank J. Purnell, Jr., to name and accuse other persons as participants in alleged thefts of personal property, alleged to be the property of the said Lindsley Lumber Co., and for the purpose of imposing illegal

summary punishment upon the said Frank J. Purnell, Jr.

"That at the time and places aforesaid, Andrew J. Yuhas and Lindsley Lumber Co., a corporation, defendants herein, well knowing all of the premises aforesaid, did * * * wilfully aid and abet in the commission by the defendants, Jay G. Williams, Joseph V. Perry and John S. Bombaci and Charles R. Ford, of the offenses described in this Count.

"In violation of Section 52, Title 18, United States Code (1946 Ed.)."

Counts 4, 6 and 8 substitute in place of the name Frank J. Purnell, Jr., the respective names of Chester H. Robinson, Henry W. Priest and John P. Sturniolo, as the person alleged to have been assaulted. In all other material respects, they are the same as Count 2.

The evidence adduced at the trial of cause numbered 7279 is before this Court with the record in the petition of J. G. Williams in cause numbered 365, and we submit that the testimony of Government witnesses in the prior trial is in substance the same as and differs in no material respect from that taken by the Government in the case at bar.

The evidence of the alleged conspiracy is confined to proof that the substantive act, the employment of third-degree methods, was committed by the trial defendants.

The testimony offered by the Government in both cases tended to prove that the complaining witnesses were taken to the "paint shack" on or about the dates stated in the indictments and were there assaulted and mistreated by the individual defendants named in the indictments while some of the defendants were police or special police officers in order that confessions might be obtained from the complaining witnesses.

In the prior case Williams was found guilty by the jury of violating the even numbered or substantive counts of the indictment charged under Section 20. All of the other defendants were found not guilty of those counts.

As to the odd numbered counts, charging conspiracy under Section 19, the jury were unable to agree and a mistrial as to such counts resulted.

Counsel is not unaware of the general rule that commission of a substantive offense and a conspiracy to commit that offense are separate and distinct offenses, so that one may be prosecuted for both crimes without being put twice in jeopardy, but in view of the similarity of the testimony offered in the two trials with which we are concerned, and especially in view of the trial Court's instructions to the jury in the prior trial, which resulted in acquittal of all defendants except Williams, we must and do contend that the question of whether or not the other defendants participated in any material way, as aiders, abettors or conspirators, has been determined adversely to the Government and is *res judicata*.

The instructions delivered by the Court in the prior trial, case No. 7279, were offered and received in the trial of the instant case in support of various defense motions and marked "Defendants' Exhibit E" (R. 321, 322, 328, 330, 332) and are before this Court with the record.

The pertinent instructions given at the prior trial are as follows:

> "That expression of 'color of law' does not mean that in your consideration of these counts, you should be bound by the question of whether every one of the defendants charged in these counts was a police officer. It is my recollection that under the evidence there is no proof that Bombaci was an officer, and

certainly Yuhas was not any kind of an officer, and of course the corporation was not an officer. But I wish to call your attention in that connection to what is known as the Federal 'aiding and abetting' statute. You will note from the indictment that Yuhas and the corporation are indicted for aiding and abetting, but that really makes no difference in view of the statute which I am about to read to you, which is as follows: 'Whoever directly commits any act constituting an offense defined in any law of the United States, or aids, abets, counsels, commands, induces, or procures its commission, is a principal" (R. 321).

"I can't make it too emphatic to you, gentlemen, that mere presence when a crime is committed is, of course, not sufficient to render one guilty as aider or abettor. The fact that a person is present when a crime is committed and no more is not sufficient to convict him. There must be something to show that the person present and so charged, in some way procured, or incited, or encouraged, the act done by the actual perpetrator. But whether a person does in fact aid or abet another in the commission of a crime is a question for you to determine, from the circumstances of the case as well as the direct evidence" (R. 322).

"* * * I think I have already made it clear to you that if a person is present and aids and abets and encourages and any way assists them, he is guilty of the crime" (R. 328).

And again, in response to a question by one of the jurors, which is quoted below, the Court delivered a further charge:

"One of the Jurors: I think that one of the major points of the case at issue among the jury men is, if a person is present—which no doubt you remember as being brought out in this case—must that person be found guilty or not guilty, due to his presence in the room?

"The Court: I think it would help you to know the exact language of the statute, and the exact language of the statute is this: 'Whoever directly commits any act constituting an offense defined in any law of the United States, or aids, abets, counsels, commands, induces, or procures its commission, is a principal.'

"Mere presence when a crime is committed is, of course, not sufficient to render one guilty as aider or abettor. There must be something to show that the person present and so charged, in some way procured, or incited, or encouraged, the act done by the actual perpetrator. But whether a person does in fact aid or abet another in the commission of a crime is a question for the jury, which may be determined by circumstances as well as by direct evidence.

"I don't know if I gave you any examples or not. If you and I are walking down the street and we see some person coming along, and you say, 'I am going to hold that person up,' and possibly you yank out a gun and possibly do it. The fact that I am standing there and do not stop you would not make me guilty. But if I do anything—I don't have to grab him, I don't have to hit the person—*but if I do anything to encourage it;* if I should say, for instance, 'Go ahead. I'll watch'—or—'Well, that's a good idea.' If I do anything to aid, abet, encourage or counsel, that would make me guilty as a principal" (R. 330) (Emphasis supplied).

The Court delivered a further instruction to the jury in response to a question by one of the jurors.

"One of the Jurors: The mere presence of a man does not necessarily imply that he aided or abetted, does it?

"The Court: No, sir it does not. The mere fact that a man was present is not sufficient to convict him. If a man was merely present where a crime was committed, you should not convict him. If he is

present and in any way aided, abetted, encouraged, or gave counsel, then he would be guilty and should be convicted" (R. 332).

It is true that only Yuhas and Lindsley Lumber Company were charged with aiding and abetting in the prior indictment but the charges above stated are clearly not confined to them alone, for the Court said: "You will note from the indictment that Yuhas and the corporation are indicted for aiding and abetting, *but that really makes no difference* in view of the statute which I am about to read to you" (Emphasis supplied).

Under those instructions, if the jury had believed that any of the defendants had committed the act, or had aided, abetted, counseled, commanded, induced, procured, incited, encouraged, or assisted any one else in the commission of the act, it would have been their duty to convict him. The jury convicted only Williams and acquitted all of the others of the substantive offense.

Counsel have endeavored unsuccessfully to imagine a conspiracy in which at least one of the things listed above, all of which were included in the charge, was not done. We submit that such a conspiracy lies beyond the realm of conjecture, especially where the sole proof of conspiracy is proof of the commission of the substantive act.

The verdict in the prior trial determined that none of the defendants below, with the exception of Williams, committed the substantive act and also that they did not participate criminally in its commission; therefore, the verdict in the instant case is inconsistent with that in the prior case and should not be permitted to stand. Naturally, if the other defendants below did not conspire with Williams, he cannot be guilty of conspiring with them.

A man cannot conspire with himself. The statute, Section 19, uses the words "'two or more."

Williams attacked the indictment in the instant case by motion to dismiss, setting up his conviction in the prior case, No. 7279, and alleging that the evidence necessary to support the indictment in the case at bar would have been sufficient to procure his conviction under the first indictment, "as all charges against the defendant, Jay G. Williams, are based upon the same act," and that, because of such former jeopardy, his constitutional rights under the Fifth Amendment are violated (R. 10).

After the time fixed by the trial Court for attacking the indictment, but before the trial, the appellant Ford sought to amend his motion to dismiss, previously filed, in order to raise the question of *res judicata*. This motion was denied (R. 18-23). The question, however, was raised by objection throughout the trial to testimony offered by the Government tending to prove the events which transpired in the "paint shack" on or about the dates mentioned in the two indictments and by motions to strike such testimony upon the ground of *res judicata* (R. 42-44, 56, 72, 75, 77, 80-81).

The same point was also raised in motions for judgment of acquittal (R. 22, 24, 349), motions in arrest of judgment (R. 343, 346), and motions for a new trial (R. 345, 349).

The Court of Appeals did not determine that the issues determined in the prior trial precluded prosecution of the case at bar but stated page 650 (R. 384):

> "In the present case the direct evidence of conspiracy is slight, and absent as to some defendants, reliance being put on evidence that they were all present when the beatings and other things were done

and did not try to stop them, but did some things to help. The adjudication that only Williams did the wrong the others did not counsel, aid or abet him in doing it, would be very helpful to these others in rebutting the inference that there was a previous conspiracy to do it. For this evidentiary purpose the record and the charge of the court to show what was tried before, were admissible and it was error to exclude them."

The Government contends (Gov't. brief, p. 72) that *res judicata* is a plea in bar which presents a legal question, raising no issues of fact for the jury.

In this contention we are inclined to agree. The trial Court should have sustained our several motions and objections based upon this matter. However, the least that should have been done would have been to follow the procedure suggested by the Appeals Court.

The criteria laid down in the case of *Sealfon* v. *United States*, 332 U. S. 575, 92 L. Ed. 180, should have been followed.

The situation in the cited case is just the reverse of that in the case at bar. As stated by Mr. Justice Douglas, speaking for the Court, "This case presents the question whether an acquittal of conspiracy to defraud the United States precludes a subsequent prosecution for commission of the substantive offense, on the particular facts here involved."

The petitioner, a dealer in sugar products, was indicted for conspiring with another, Greenberg, to defraud the United States by presenting false invoices of sales to agencies exempt from sugar rationing, for the purpose of obtaining an additional allotment. He and the alleged co-conspirator were also indicted for the substantive offense,

viz., uttering and publishing as true the false invoices. The conspiracy indictment was tried first and resulted in acquittal of the petitioner.

Petitioner and Greenberg were then tried for the substantive offense to which Greenberg plead guilty and "the trial proceeded against petitioner on the theory that he aided and abetted Greenberg" in its commission.

In stating the case, this Court said, in part, page 577:

> "* * * The false invoices, the letter from petitioner to Greenberg" (in which he stated "some of our syrups are being sold at the Brooklyn Navy Yard" and various defense plants) "and essentially the same testimony were again introduced against petitioner."

In the case at bar, the testimony offered by the Government in substance varied in no material respects from that offered in the prior trial.

In holding that the issues raised in the second trial were *res judicata* and that petitioner's conviction had there should accordingly be set aside, this Court said, *inter alia*, page 578:

> "It has long been recognized that the commission of the substantive offense and a conspiracy to commit it are separate and distinct offenses" (cases cited). "Thus with some exceptions, one may be prosecuted for both crimes.—But *res judicata* may be a defense in a second prosecution. That doctrine applies to criminal as well as civil proceedings" (cases cited) "and operates to conclude those matters in issue which the verdict determined though the offenses be different" (Cases cited). "Thus the only question in this case is whether the jury's verdict in the conspiracy trial *was a determination favorable to petitioner of the facts essential to conviction* of the substantive offense. *This depends upon the facts ad-*

duced at each trial and the instructions under which the jury arrived at its verdict at the first trial" (Emphasis supplied).

The Court further said, page 580:

"* * * Thus the core of the prosecutor's case was in each case the same; the letter, and the circumstances surrounding it and to be inferred from it, and the false invoices. There was, of course, additional evidence on the second trial adding detail to the circumstances leading up to the alleged agreement, petitioner's participation therein, and what he may have got out of it. But at most this evidence only made it more likely that petitioner had entered into the corrupt agreement. It was a second attempt to prove the agreement which at each trial was crucial to the prosecutor's case and which was necessarily *adjudicated* in the former trial to be non-existent. That the prosecution may not do" (Emphasis supplied).

In the case at bar, the core of the Government's case was criminal participation by the defendants in the mistreatment of the complaining witnesses. The only evidence offered to prove conspiracy was evidence tending to show actual participation in such mistreatment. It was a second attempt to prove such criminal participation after a jury had determined that the defendants, other than Williams, had not participated criminally in such mistreatment and that they had not aided or abetted Williams in any way in the commission of the act.

To say that this is anything more than a second prosecution for the same alleged offense is to distort the meaning of words common to our language, even to a greater extent than occurs when we say that the unlawful acts of a policeman are the acts of the State.

This case is nothing more than an attempt by the Government to have a fourth strike, regardless of the conspiracy fiction which makes two offenses out of one. Regardless of the strained logic which is employed to support the Government's contention, the practical result is that the defendants have suffered a deprivation of a right secured by the Fifth Amendment to the Constitution of the United States providing, "nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb."

We earnestly invite the Court's attention to the concurring opinion of Mr. Justice Jackson, in which Mr. Justice Frankfurter and Mr. Justice Murphy joined, in *Krulewitch* v. *United States*, 336 U. S. 440, 445, 93 L. Ed. 790, for a thorough and critical discussion of the employment by the Government of the several conspiracy statutes.

CONCLUSION.

For the reasons stated, it is respectfully submitted that the judgment below should be reversed.

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JOINDER IN BRIEF.

The respondents, Jay G. Williams, John S. Bombaci, and Joseph V. Perry, join in and adopt the above and foregoing brief submitted on behalf of the respondent, Charles R. Ford.

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